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SALUS POPULI SUPREMA LEX ESTO

"The welfare of the people shall be the supreme law."



JASON KANDER
SECRETARY OF STATE

MISSOURI
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RULES—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 28, *Missouri Register*, page 27. The approved short form of citation is 28 MoReg 27.

The rules are codified in the *Code of State Regulations* in this system—

| Title | Code of State Regulations | Division | Chapter | Rule |
|------------|---------------------------|------------------|------------------------|-------------------------|
| 1 | CSR | 10- | 1. | 010 |
| Department | | Agency, Division | General area regulated | Specific area regulated |

They are properly cited by using the full citation, i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division within the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

RSMo—The most recent version of the statute containing the section number and the date.

Rules appearing under this heading are filed under the authority granted by section 536.025, RSMo 2000. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety, or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons, and findings which support its conclusion that there is an immediate danger to the public health, safety, or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

Rules filed as emergency rules may be effective not less than ten (10) days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

All emergency rules must state the period during which they are in effect, and in no case can they be in effect more than one hundred eighty (180) calendar days or thirty (30) legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 10—Nursing Home Program**

EMERGENCY AMENDMENT

13 CSR 70-10.030 Prospective Reimbursement Plan for Nonstate-Operated Facilities for ICF//MR//IID Services. The division is amending sections (1)–(7) and adding new subparagraph (4)(A)1.O.

PURPOSE: This amendment changes the terminology of the services addressed in this regulation from “nonstate-operated intermediate care facility/mentally retarded (ICF/MR) services” to “nonstate-operated intermediate care facility for individuals with intellectual disabilities (ICF/IID) services” and provides for trend factors to be applied to adjust per diem rates for nonstate-operated ICF/IID facilities participating in the MO HealthNet program.

PURPOSE: This rule establishes a payment plan for nonstate-operated intermediate care facility/mentally retarded] for individuals with intellectual disabilities services. The plan describes principles to be followed by Title XIX intermediate care facility/mentally retarded] for individuals with intellectual disabilities providers in making financial reports and presents the necessary procedures for setting rates, making adjustments, and auditing the cost reports.

EMERGENCY STATEMENT: The Department of Social Services, MO HealthNet Division, by rule and regulation, must define the reason-

*able costs, manner, extent, quantity, quality, charges and fees of medical assistance provided. Effective for dates of service beginning February 1, 2016, the appropriation by the General Assembly included additional funds to increase nonstate-operated ICF/IID reimbursement rates by one percent (1%). The MO HealthNet Division is carrying out the General Assembly’s intent by providing for a per diem increase to ICF/IID reimbursement rates of one percent (1%). The one percent (1%) increase is necessary to ensure that payments for ICF/IID per diem rates are in line with the funds appropriated for that purpose. There are a total of seven (7) nonstate-operated ICF/IID providers currently enrolled in Missouri Medicaid, all of which will receive a one percent (1%) increase to their reimbursement rates. This emergency amendment will ensure payment for ICF/IID services to approximately seventy-seven (77) ICF/IID Missourians in accordance with the appropriation authority. For the State Fiscal Year 2016 trend increase to be implemented, a Medicaid State Plan Amendment (SPA) was required to be submitted to and approved by the Centers for Medicare and Medicaid Services (CMS). The SPA was approved by CMS on May 10, 2016, but the proposed state regulation will not be effective until approximately February 28, 2017. This emergency amendment must be implemented on a timely basis to ensure that quality ICF/IID services continue to be provided to Medicaid patients in ICF/IID facilities in accordance with the appropriation authority. As a result, the MO HealthNet Division finds an immediate danger to public health, safety, and/or welfare and a compelling governmental interest, which requires emergency action. The Missouri Medical Assistance program has a compelling governmental interest in providing continued cash flow for ICF/IID services. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended by the *Missouri* and *United States Constitutions*. The MO HealthNet Division believes this emergency amendment is fair to all interested persons and parties under the circumstances. A proposed amendment covering this same material will be published in the *Missouri Register*. This emergency amendment was filed August 15, 2016, becomes effective September 1, 2016, and expires February 27, 2017.*

(1) Objectives. This rule establishes a payment plan for nonstate-operated intermediate care facility/mentally retarded] for individuals with intellectual disabilities (ICF//MR//IID) services.

(2) General Principles.

(A) The MO HealthNet program shall reimburse qualified providers of ICF//MR//IID services based solely on the individual MO HealthNet participant’s days of care (within benefit limitations) multiplied by the facility’s Title XIX per diem rate less any payments made by participants.

(B) Effective November 1, 1986, the Title XIX per diem rate for all ICF//MR//IID facilities participating on or after October 31, 1986, shall be the lower of—

1. The average private pay charge;
2. The Medicare per diem rate, if applicable;
3. The rate paid to a facility on October 31, 1986, as adjusted by updating its base year to its 1985 fiscal year. Facilities which do not have a full twelve- (12-) month 1985 fiscal year shall not have their base years updated to their 1985 fiscal years. Changes in ownership, management, control, operation, leasehold interests by whatever form for any facility previously certified for participation in the MO HealthNet program at any time that results in increased capital costs for the successor owner, management, or leaseholder shall not be recognized for purposes of reimbursement; and

4. However, any provider who does not have a rate on October 31, 1986, and whose facility meets the definition in subsection (3)(J) of this rule, will be exempt from paragraph (2)(B)3., and the rate shall be determined in accordance with applicable provisions of this rule.

(3) Definitions.

(H) ICF//MR/IID. Nonstate-operated facilities certified to provide intermediate care for *[the mentally retarded] individuals with intellectual disabilities* under the Title XIX program.

(L) Providers. A provider under the Prospective Reimbursement Plan is a nonstate-operated ICF//MR/IID facility with a valid participation agreement, in effect on or after October 31, 1986, with the Missouri Department of Social Services for the purpose of providing long-term care (LTC) services to Title XIX-eligible participants. Facilities certified to provide intermediate care services to *[the mentally retarded] individuals with intellectual disabilities* under the Title XIX program may be offered a MO HealthNet participation agreement on or after January 1, 1990, only if 1) the facility has no more than fifteen (15) beds for *[mentally retarded residents] individuals with intellectual disabilities*, and 2) there is no other licensed residential living facility for *[mentally retarded] individuals with intellectual disabilities* within a radius of one-half (1/2) mile of the facility seeking participation in the MO HealthNet program.

(4) Prospective Reimbursement Rate Computation.

(A) Except in accordance with other provisions of this rule, the provisions of this section shall apply to all providers of ICF//MR/IID services certified to participate in Missouri's MO HealthNet program.

1. ICF//MR/IID facilities.

A. Except in accordance with other provisions of this rule, the MO HealthNet program shall reimburse providers of these LTC services based on the individual MO HealthNet-participant days of care multiplied by the Title XIX prospective per diem rate less any payments collected from participants. The Title XIX prospective per diem reimbursement rate for the remainder of state Fiscal Year 1987 shall be the facility's per diem reimbursement payment rate in effect on October 31, 1986, as adjusted by updating the facility's allowable base year to its 1985 fiscal year. Each facility's per diem costs as reported on its Fiscal Year 1985 Title XIX cost report will be determined in accordance with the principles set forth in this rule. If a facility has not filed a 1985 fiscal year cost report, the most current cost report on file with the department will be used to set its per diem rate. Facilities with less than a full twelve- (12-) month 1985 fiscal year will not have their base year rates updated.

B. For state FY-88 and dates of service beginning July 1, 1987, the negotiated trend factor shall be equal to two percent (2%) to be applied in the following manner: Two percent (2%) of the average per diem rate paid to both state- and nonstate-operated ICF//MR/IID facilities on June 1, 1987, shall be added to each facility's rate.

C. For state FY-89 and dates of service beginning January 1, 1989, the negotiated trend factor shall be equal to one percent (1%) to be applied in the following manner: One percent (1%) of the average per diem rate paid to both state- and nonstate-operated ICF//MR/IID facilities on June 1, 1988, shall be added to each facility's rate.

D. For state FY-91 and dates of service beginning July 1, 1990, the negotiated trend factor shall be equal to one percent (1%) to be applied in the following manner: One percent (1%) of the average per diem rate paid to both state- and nonstate-operated ICF//MR/IID facilities on June 1, 1990, shall be added to each facility's rate.

E. FY-96 negotiated trend factor. All nonstate-operated ICF//MR/IID facilities shall be granted an increase to their per diem rates effective for dates of service beginning January 1, 1996, of six dollars and seven cents (\$6.07) per patient day for the negotiated trend factor. This adjustment is equal to four and six-tenths percent (4.6%) of the weighted average per diem rates paid to nonstate-operated ICF//MR/IID facilities on June 1, 1995, of one hundred and thirty-one dollars and ninety-three cents (\$131.93).

F. State FY-99 trend factor. All nonstate-operated ICF//MR/IID facilities shall be granted an increase to their per diem rates effective for dates of service beginning July 1, 1998, of four dollars and forty-seven cents (\$4.47) per patient day for the trend factor. This adjustment is equal to three percent (3%) of the weighted

average per diem rate paid to nonstate-operated ICF//MR/IID facilities on June 30, 1998, of one hundred forty-eight dollars and ninety-nine cents (\$148.99).

G. State FY-2000 trend factor. All nonstate-operated ICF//MR/IID facilities shall be granted an increase to their per diem rates effective for dates of service beginning July 1, 1999, of four dollars and sixty-three cents (\$4.63) per patient day for the trend factor. This adjustment is equal to three percent (3%) of the weighted average per diem rate paid to nonstate-operated ICF//MR/IID facilities on April 30, 1999, of one hundred fifty-four dollars and forty-three cents (\$154.43). This increase shall only be used for increases for the salaries and fringe benefits for direct care staff and their immediate supervisors.

H. State FY-2001 trend factor. All nonstate-operated ICF//MR/IID facilities shall be granted an increase to their per diem rates effective for dates of service beginning July 1, 2000, of four dollars and eighty-one cents (\$4.81) per patient day for the trend factor. This adjustment is equal to three percent (3%) of the weighted average per diem rate paid to nonstate-operated ICF//MR/IID facilities on April 30, 2000, of one hundred sixty dollars and twenty-three cents (\$160.23). This increase shall only be used for increases for salaries and fringe benefits for direct care staff and their immediate supervisors.

I. State FY-2007 trend factor. All nonstate-operated ICF//MR/IID facilities shall be granted an increase of seven percent (7%) to their per diem rates effective for dates of service billed for state fiscal year 2007 and thereafter. This adjustment is equal to seven percent (7%) of the per diem rate paid to nonstate-operated ICF//MR/IID facilities on June 30, 2006.

J. State FY-2008 trend factor. Effective for dates of service beginning July 1, 2007, all nonstate-operated ICF//MR/IID facilities shall be granted an increase to their per diem rates of two percent (2%) for the trend factor. This adjustment is equal to two percent (2%) of the per diem rate paid to nonstate-operated ICF//MR/IID facilities on June 30, 2007.

K. State FY-2009 trend factor. Effective for dates of service beginning July 1, 2008, all nonstate-operated ICF//MR/IID facilities shall be granted an increase to their per diem rates of three percent (3%) for the trend factor. This adjustment is equal to three percent (3%) of the per diem rate paid to nonstate-operated ICF//MR/IID facilities on June 30, 2008.

L. State FY-2009 catch up increase. Effective for dates of service beginning July 1, 2008, all nonstate-operated ICF//MR/IID facilities shall be granted an increase to their per diem rates of thirteen and ninety-five hundredths percent (13.95%). This adjustment is equal to thirteen and ninety-five hundredths percent (13.95%) of the per diem rate paid to nonstate-operated ICF//MR/IID facilities on June 30, 2008. This increase is intended to provide compensation to providers for the years (2003, 2004, 2005, and 2006) where no trend factor was given. The catch up increase was based on the CMS PPS Skilled Nursing Facility Input Price Index (4 quarter moving average).

M. State FY-2012 trend factor. Effective for dates of service beginning October 1, 2011, all nonstate-operated ICF//MR/IID facilities shall be granted an increase to their per diem rates of one and four tenths percent (1.4%) for the trend factor. This adjustment is equal to one and four tenths percent (1.4%) of the per diem rate paid to nonstate-operated ICF//MR/IID facilities on September 30, 2011.

N. State FY-2014 trend factor. Effective for dates of service beginning January 1, 2014, all nonstate-operated ICF//MR/IID facilities shall be granted an increase to their per diem rates of three percent (3%) for the trend factor. This adjustment is equal to three percent (3%) of the per diem rate paid to nonstate-operated ICF//MR/IID facilities on December 31, 2013.

O. State FY-2016 trend factor. Effective for dates of service beginning February 1, 2016, all nonstate-operated ICF/IIID facilities shall be granted an increase to their per diem rates of

one percent (1%) for the trend factor. This adjustment is equal to one percent (1%) of the per diem rate paid to nonstate-operated ICF//MR/IID facilities on January 31, 2016.

2. Adjustments to rates. The prospectively determined reimbursement rate may be adjusted only under the following conditions:

A. When information contained in a facility's cost report is found to be fraudulent, misrepresented, or inaccurate, the facility's reimbursement rate may be reduced, both retroactively and prospectively, if the fraudulent, misrepresented, or inaccurate information as originally reported resulted in establishment of a higher reimbursement rate than the facility would have received in the absence of this information. No decision by the MO HealthNet agency to impose a rate adjustment in the case of fraudulent, misrepresented, or inaccurate information in any way shall affect the MO HealthNet agency's ability to impose any sanctions authorized by statute or rule. The fact that fraudulent, misrepresented, or inaccurate information reported did not result in establishment of a higher reimbursement rate than the facility would have received in the absence of the information also does not affect the MO HealthNet agency's ability to impose any sanctions authorized by statute or rules;

B. In accordance with subsection (6)(B) of this rule, a newly constructed facility's initial reimbursement rate may be reduced if the facility's actual allowable per diem cost for its first twelve (12) months of operation is less than its initial rate;

C. When a facility's MO HealthNet reimbursement rate is higher than either its private pay rate or its Medicare rate, the MO HealthNet rate will be reduced in accordance with subsection (2)(B) of this rule;

D. When the provider can show that it incurred higher cost due to circumstances beyond its control, and the circumstances are not experienced by the nursing home or ICF//MR/IID industry in general, the request must have a substantial cost effect. These circumstances include, but are not limited to:

(I) Acts of nature, such as fire, earthquakes, and flood that are not covered by insurance;

(II) Vandalism, civil disorder, or both; or

(III) Replacement of capital depreciable items not built into existing rates that are the result of circumstances not related to normal wear and tear or upgrading of existing system;

E. When an adjustment to a facility's rate is made in accordance with the provisions of section (6) of this rule; or

F. When an adjustment is based on an Administrative Hearing Commission or court decision.

(B) In the case of newly constructed nonstate-operated ICF//MR/IID facilities entering the MO HealthNet program after October 31, 1986, and for which no rate has previously been set, the director or his/her designee may set an initial rate for the facility as in his/her discretion s/he deems appropriate. The initial rate shall be subject to review by the advisory committee under the provisions of section (6) of this rule.

(5) Covered Services and Supplies.

(A) ICF//MR/IID services and supplies covered by the per diem reimbursement rate under this plan, and which must be provided, as required by federal or state law or rule and include, among other services, the regular room, dietary and nursing services, or any other services that are required for standards of participation or certification. Also included are minor medical and surgical supplies and the use of equipment and facilities. These items include, but are not limited to, the following:

1. All general nursing services including, but not limited to, administration of oxygen and related medications, hand-feeding, incontinency care, tray service, and enemas;

2. Items which are furnished routinely and relatively uniformly to all participants, for example, gowns, water pitchers, soap, basins, and bed pans;

3. Items such as alcohol, applicators, cotton balls, bandaids, and tongue depressors;

4. All nonlegend antacids, nonlegend laxatives, nonlegend stool softeners, and nonlegend vitamins. Any nonlegend drug in one (1) of these four (4) categories must be provided to residents as needed and no additional charge may be made to any party for any of these drugs. Facilities may not elect which nonlegend drugs in any of the four (4) categories to supply; all must be provided as needed within the existing per diem rate;

5. Items which are utilized by individual participants but which are reusable and expected to be available, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable, nondepreciable medical equipment;

6. Additional items as specified in the appendix to this plan when required by the patient;

7. Special dietary supplements used for tube feeding or oral feeding, such as elemental high nitrogen diet, including dietary supplements written as a prescription item by a physician;

8. All laundry services except personal laundry which is a non-covered service;

9. All general personal care services which are furnished routinely and relatively uniformly to all participants for their personal cleanliness and appearance shall be covered services, for example, necessary clipping and cleaning of fingernails and toenails, basic hair care, shampoos, and shaves to the extent necessary for reasonable personal hygiene. The provider shall not bill the patient or his/her responsible party for this type of personal service;

10. All consultative services as required by state or federal law or regulation or for proper operation by the provider. Contracts for the purchase of these services must accompany the provider cost report. Failure to do so will result in the penalties specified in section (9) of this rule;

11. Semiprivate room and board and private room and board when necessary to isolate a participant due to a medical or social condition, such as contagious infection, irrational loud speech, and the like. Unless a private room is necessary due to a medical or social condition, a private room is a noncovered service, and a MO HealthNet participant or responsible party may therefore pay the difference between a facility's semiprivate charge and its charge for a private room. MO HealthNet participants may not be placed in private rooms and charged any additional amount above the facility's MO HealthNet per diem unless the participant or responsible party in writing specifically requests a private room prior to placement in a private room and acknowledges that an additional amount not payable by MO HealthNet will be charged for a private room;

12. Twelve (12) days per any period of six (6) consecutive months during which a participant is on a temporary leave of absence from the facility. Temporary leave of absence days must be specifically provided for in the participant's plan of care. Periods of time during which a participant is away from the facility because s/he is visiting a friend or relative are considered temporary leaves of absence; and

13. Days when participants are away from the facility overnight on facility-sponsored group trips under the continuing supervision and care of facility personnel.

(6) Rate Determination. All nonstate-operated ICF//MR/IID providers of LTC services under the MO HealthNet program who desire to have their rates changed or established must apply to the MO HealthNet Division. The department may request the participation of the Department of Mental Health in the analysis for rate determination. The procedure and conditions for rate reconsideration are as follows:

(E) Rate Adjustments. The department may alter a facility's per diem rate based on—

1. Court decisions;

2. Administrative Hearing Commission decisions;

3. Determination through desk audits, field audits, and other means, which establishes misrepresentations in or the inclusion of unallowable costs in the cost report used to establish the per diem

rate. In these cases, the adjustment shall be applied retroactively; or

4. Adjustments determined by the department without the advice of the rate advisory committee.

A. Prospective payment adjustment (PPA). A FY-92 PPA will be provided prior to the end of the state fiscal year for nonstate-operated ICF//MR/IID facilities with a current provider agreement on file with the MO HealthNet Division as of October 1, 1991.

(I) For providers which qualify, the PPA shall be the lesser of—

(a) The provider's facility peer group factor (FPGF) times the projected patient days (PPD) covered by the adjustment year times the prospective payment adjustment factor (PPAF) times the nonstate-operated intermediate care facility for *[the mentally retarded] individuals with intellectual disabilities* ceiling (ICF//MR/IIDC) on October 1, 1991 (FPGF × PPD × PPAF × ICF//MR/IIDC). For example: A provider having nine hundred twenty (920) paid days for the period May 1991 to July 1991 out of a total paid days for this same period of twenty-eight thousand five hundred sixty-one (28,561) represents an FPGF of three and twenty-two hundredths percent (3.22%). So using the FPGF of 3.22% × 114,244 × 24.5% × \$156.01 = \$140,659; or

(b) The provider FPGF times one hundred forty-five percent (145%) of the amount credited to the intermediate care revenue collection center (ICRCC) of the State Title XIX Fund (STF) for the period October 1, 1991 through December 31, 1991.

(II) FPGF—is determined by using each ICF//MR/IID facility's paid days for the service dates in May 1991 through July 1991 as of September 20, 1991, divided by the sum of the paid days for the same service dates for all provider's qualifying as of the determination date of October 16, 1991.

(III) ICF//MR/IIDC—is one hundred fifty-six dollars and one cent (\$156.01) on October 1, 1991.

(IV) PPAF—is equal to twenty-four and five-tenths percent (24.5%) for fiscal year 1992 which includes an adjustment for economic trends.

(V) PPD—is the projection of one hundred fourteen thousand two hundred forty-four (114,244) patient days made on October 1, 1991, for the adjustment year;

5. FY-92 trend factor and Workers' Compensation. All facilities with either an interim rate or a prospective per diem rate in effect on September 1, 1992, shall be granted an increase to their per diem rate effective September 1, 1992, of eight dollars and eighty-six cents (\$8.86) per patient day related to the continuation of the FY-92 trend factor and the Workers' Compensation adjustment. This adjustment is equal to seven and one-half percent (7.5%) of the March 1992 weighted average per diem rate of one hundred eighteen dollars and fourteen cents (\$118.14) for all nonstate-operated ICF//MR/IID facilities; or

6. FY-93 negotiated trend factor. All facilities with either an interim rate or prospective per diem rate in effect on September 1, 1992, shall be granted an increase to their per diem rate effective September 1, 1992, of one dollar and sixty-six cents (\$1.66) per patient day for the negotiated trend factor. This adjustment is equal to one and four-tenths percent (1.4%) of the March 1992 weighted average per diem rate of one hundred eighteen dollars and fourteen cents (\$118.14) for all nonstate-operated ICF//MR/IID facilities; and

(7) Allowable Cost Areas.

(N) Utilization Review. Incurred cost for the performance of required utilization review for ICF//MR/IID is an allowable cost area. The expenditures must be for the purpose of providing utilization review on behalf of a Title XIX participant. Utilization review costs incurred for Title XVIII and Title XIX must be apportioned on the basis of reimbursable participant days recorded for each program during the reporting period.

(R) Apportionment of Costs to MO HealthNet Participant Residents.

1. Provider's allowable cost areas shall be apportioned between

MO HealthNet program participant residents and other patients so that the share borne by the MO HealthNet program is based upon actual services received by program participants.

2. To accomplish this apportionment, the ratio of participant residents' charges to total patient charges for the service of each ancillary department may be applied to the cost of this department. To this shall be added the cost of routine services for MO HealthNet program participant residents determined on the basis of a separate average cost per diem for general routine care areas or at the option of the provider on the basis of overall routine care area.

3. So that its charges may be allowable for use in apportioning costs under the program, each provider shall have an established charge structure which is applied uniformly to each patient as services are furnished to the patient and which is reasonable and consistently related to the cost of providing these services.

4. Average cost per diem for general routine services means the amount computed by dividing the total allowable patient costs for routine services by the total number of patient days of care rendered by the provider in the cost-reporting period.

5. A patient day of care is that period of service rendered a patient between the census-taking hours on two (2) consecutive days, including the twelve (12) temporary leave of absence days per any period of six (6) consecutive months as specifically covered under section (5) of this rule, the day of discharge being counted only when the patient was admitted the same day. A census log shall be maintained in the facility for documentation purposes. Census shall be taken daily at midnight. A day of care includes those overnight periods when a participant is away from the facility on a facility-sponsored group trip and remains under the supervision and care of facility personnel.

6. ICF//MR/IID facilities that provide intermediate care services to MO HealthNet participants may establish distinct part cost centers in their facility provided that adequate accounting and statistical data required to separately determine the nursing care cost of each distinct part is maintained. Each distinct part may share the common services and facilities, such as management services, dietary, housekeeping, building maintenance, and laundry.

7. In no case may a provider's allowable costs allocated to the MO HealthNet program include the cost of furnishing services to persons not covered under the MO HealthNet program.

AUTHORITY: section 208.159, RSMo 2000, and sections 208.153 and 208.201, RSMo Supp. 2013. This rule was previously filed as 13 CSR 40-81.083. Original rule filed Aug. 13, 1982, effective Nov. 11, 1982. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Aug. 15, 2016, effective Sept. 1, 2016, expires Feb. 27, 2017. A proposed amendment covering this same material is published in this issue of the Missouri Register.

Under this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

Entirely new rules are printed without any special symbology under the heading of proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

An important function of the *Missouri Register* is to solicit and encourage public participation in the rulemaking process. The law provides that for every proposed rule, amendment, or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

If an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least thirty (30) days after publication of the notice in the *Missouri Register*. If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than thirty (30) days after publication of the notice in the *Missouri Register*.

An agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the ninety- (90-) day-count necessary for the filing of the order of rulemaking.

If an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than thirty (30) days from the date of publication of the new notice.

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 1—Organization; General Provisions**

PROPOSED AMENDMENT

7 CSR 10-1.010 Description, Organization, and Information. The Missouri Highways and Transportation Commission is amending sections (1), (2), and (3).

PURPOSE: This amendment updates the department's organizational structure consistent with the department's current business practices as required by section 536.023, RSMo.

(1) History and Authority. The Highways and Transportation Department was formed when voters approved Constitutional Amendment 2 in November 1979, merging the previously separate

Highways and Transportation Departments. *[Legislation passed in 1996] Constitutional Amendment 3, approved by voters in 2004*, changed the name of the Highways and Transportation Department to the Missouri Department of Transportation (MoDOT or department). **Per Article IV, Section 29, Missouri Constitution**, MoDOT is governed by the Missouri Highways and Transportation Commission (commission). The commission has authority over all state highways and transportation programs and facilities as provided by Article IV, Sections 29, 30(a), 30(b), and 30(c) of the *Missouri Constitution*. The number, qualifications, compensation, and terms of the members of the commission are fixed by law. Under Chapter 226, RSMo, the bi-partisan commission is comprised of six (6) members. Commission members are appointed by the governor, by and with the consent of the senate, for terms of six (6) years. Not more than three (3) commissioners can be members of the same political party. The director of MoDOT, as the chief executive officer, and secretary, as record keeper for the commission, are appointed by the commission under Chapter 226, RSMo. MoDOT is responsible for the location, design, construction, and maintenance of the state's highway system including accommodation for non-motorized transportation. MoDOT coordinates and cooperates with the owners and operators of transportation facilities and services, which include transit, air, rail, ports, and waterborne commerce. MoDOT works with these groups in the development and improvement of public and special transit systems, airports, rail facilities, and ports. MoDOT administers federal and state funds for various transportation programs as these funds become available. In carrying out these functions, MoDOT works closely with local governments and citizens of the state in the planning and development of these programs, services, and facilities.

(2) Organization.

(A) General Management.

1. The director is the chief executive officer and is appointed by, and serves at the discretion of, the commission. The director appoints a chief engineer, chief financial officer, chief counsel (with the consent of the commission), and other leaders and employees as the commission may designate and deem necessary. Under the direction of the commission, the director is responsible for the overall operations and performance of the department and prescribes the duties and authority of employees. The selection and removal of all employees is without regard to political affiliation. The duties of the chief engineer, chief financial officer, and chief counsel are as follows:

A. The chief engineer *[has input on overall department decisions at MoDOT as well as overseeing engineering operations such as planning, construction, and maintenance. This position reports directly to the director and serves as the primary advisor regarding engineering issues. The chief engineer handles MoDOT's day-to-day operations. The chief engineer is also responsible for an oversight role in the preparation and approval of all engineering documents, plans, and specifications. This position provides general oversight of all design, construction, and maintenance work for the department as determined by the director] serves as MoDOT's primary advisor regarding engineering issues. This position is responsible for providing general oversight of all planning, design, construction, and maintenance work for the department as determined by the director, including preparation and approval of all engineering documents, plans, and specifications. The chief engineer reports to the director and provides input on overall department decisions;*

B. The chief financial officer is responsible for all administrative operations of MoDOT. This position provides general oversight of financial and business planning, information technology, and other administrative and financial functions as determined by the director; and

C. The chief counsel advises and represents the commission and the director in all actions and proceedings to which either may be a party or in proceedings under Chapters 226 and 227, RSMo, or with respect to any law administered by the commission or any order or proceeding of the commission. The chief counsel is responsible for drafting all contracts, conveyances, agreements, or other documents affecting the commission, property held or acquired by it, and any action taken by the commission. The chief counsel, with the director's approval, appoints assistant counsel(s) as necessary to represent the commission and the department.

2. The secretary to the commission is responsible for maintaining records of all proceedings of the commission and is the custodian of all records, documents, and papers filed with the commission, department, and other public governmental bodies established by the commission.

(B) Divisions. MoDOT pursues its mission through the following divisions:

1. Audits and Investigations is responsible for *[performing]* **conducting** audits of department operations, external contracts, grant agreements, *[and]* motor carrier fuel tax returns, and apportioned registrations. The division also investigates: fraud, waste, and abuse; *[handles]* employee grievances; *[and]* Equal Employment Opportunity complaints; **conducts mediations**; and analyzes competitive bidding practices;

2. Bridge is responsible for the structural design and detailed plans production for all state highway bridges, including cost estimates and site-specific job special provisions. Additional responsibilities include maintaining the National Bridge Inventory, recommending load posting limits for both state and non-state bridges, **bridge inspection**, and analyzing structures for special superload overweight permit loads traveling within the state;

3. **Communications is responsible for disseminating information on the activities of the commission and MoDOT to the public and to MoDOT personnel. Communications coordinates customer comments to MoDOT through public involvement meetings, customer service representatives, and surveys. Communications helps MoDOT communicate with news media through news releases and personal contact. Communications creates strategies statewide and through MoDOT's districts that educate and inform stakeholders through the web, social media, presentations, video, publications, displays, and other mediums;**

[3.]4. Construction and Materials is responsible for administering *[all]* construction contracts awarded by the commission. Contracts are awarded through the competitive bid **or design build selection** process, and then work is assigned to project offices *[located]* geographically **located** throughout the state. Engineers and technicians *[assigned to these project offices do field surveying and perform quality control tests on the work performed by contractors to ensure quality construction that improves Missouri's transportation system. Construction and Materials is responsible for sampling and testing of materials used in the construction and maintenance of roadways and structures to ensure compliance with applicable standards and specifications. Construction and Materials personnel analyze pavement designs, roadway foundations, asphaltic concrete, and Portland cement mixtures, as well as carry out soil and subsurface condition surveys and furnish geotechnical information for the design, construction, and maintenance of roads and structures]* **make owner/engineering decisions, verify contract compliance through testing and inspection, and complete and review documentation necessary to authorize payment. Construction and Materials is responsible for testing to ensure the materials used for maintenance and construction of our transportation system meet the quality standards and specifications;**

[4. Customer Relations is responsible for disseminating information on the activities of the commission and MoDOT to the public and to MoDOT personnel. Customer Relations

coordinates customer comments to MoDOT through public involvement meetings, customer service representatives, and surveys. Customer Relations helps MoDOT communicate with news media through news releases and personal contact. Customer Relations also improves MoDOT contact with customers by preparing speeches, publications, displays, and plans for communication and marketing. Customer Relations is also responsible for spearheading and directing organizational performance measures to be reported in the Tracker, and facilitates process improvement, customer satisfaction, and problem solving teams to improve operational performance;]

5. Design is responsible for the location, environmental, and cultural resource studies required for initial evaluation of proposed projects; detailed route studies, ground surveys, and aerial photography; and design and plan preparation including cost estimates for the state transportation projects. Design advertises and makes all preparations for receiving bids for transportation project contracts including the development of specifications and cost estimates prior to advertising for bids. Design is also responsible for acquisition of right of way required for the construction and maintenance of all state highways in addition to properties incidental to the system of state highways in Missouri, and provides relocation assistance for all persons displaced by the commission's right of way acquisition. Design administers the disposal or lease of land considered excess to commission needs and the regulation of outdoor advertising billboards and junkyards adjacent to regulated state highways. Design administers the Scenic Byway Program;

6. Equal Opportunity and Diversity is responsible for directing the department's Affirmative Action Program and other initiatives aimed at achieving and maintaining a diverse workforce;

7. External Civil Rights is responsible for directing the department's external affirmative action, equal opportunity, and nondiscrimination programs, which include the Disadvantaged Business Enterprise Program, On-the-Job Training Program, Equal Employment Opportunity, Title VI, Americans with Disabilities Act (ADA), and all other nondiscrimination or affirmative action programs related to federal-aid contracting activities;

8. Financial Services is responsible for providing administrative support to MoDOT in accounting, financial reporting, and policy development, building and maintaining an effective system of internal controls, and cost accounting. Financial Services is also responsible for coordinating financial resources and spending plans through forecasting, analysis, and training. Financial Services **also** performs financial planning and fiscal analysis, budget, federal aid **management**, and innovative finance administration functions for the department;

9. General Services is responsible for supporting MoDOT activities by providing guidance and support services in the areas of facilities management, procurement, inventory management, fleet management, and equipment repair;

10. Governmental Relations is responsible for *[providing a]* **acting as MoDOT's liaison between [MoDOT,] Missouri's congressional delegation[s], [and] the Missouri Legislature, and local political subdivisions.** Staff members *[disseminate information regarding proposed legislation affecting MoDOT and analyze the content of legislation, legislative proposals, and policy options]* **review and analyze proposed transportation-related legislation affecting MoDOT and provide either support or options for improving the legislative proposals and public policies impacting the traveling public. Governmental Relations staff also serve as a liaison between MoDOT and national transportation associations;**

11. Human Resources is responsible for continually developing and improving human resources' processes that support MoDOT and its employees in contributing to a quality transportation system. Responsibilities include nationally recruiting college graduates for placement throughout the state and administering employee development programs, personnel policies, the department's pay system, and

personnel records;

12. Information Systems is responsible for providing and improving information and communication services used by employees of MoDOT through the operation and maintenance of local and statewide data networks and telephone services. Information Systems staff provide applications programming expertise to support the engineering, financial, operational, and general information needs of MoDOT;

13. Maintenance is responsible for assisting and supporting maintenance activities for the preservation and operation of the state highway system;

14. Motor Carrier Services provides information, credentials, and permits and enforces safety for businesses and individuals interested in commercial property and passenger-carrying operations on public highways in and through Missouri;

15. Multimodal Operations is responsible for administering state and federal programs that support and develop non-highway passenger and freight transportation, which include aviation, railroads, transit, and waterways. Major programs include capital improvements, operating support, technical assistance, safety outreach, and identifying freight efficiencies/opportunities;

16. Risk and Benefits Management is responsible for the management and implementation of medical and life insurance plans for department employees and retirees; administration of MoDOT's self-insurance operations, including workers' compensation, fleet liability, general liability, and property damage recovery; and administration of the safety and health programs;

17. Traffic and Highway Safety is responsible for the safe and efficient movement of people and goods on the state highway system. This includes supporting signing, striping, traffic signals, lighting, intelligent transportation systems (ITS), roadway access, and safety management programs throughout the state. Traffic and Highway Safety is responsible for the coordination of traffic management, incident management, traveler information services, and the radio and emergency communication systems; and is also responsible for planning, directing, and coordinating the solicitation, review, award, and monitoring of federal highway safety grant contracts and concentrates their efforts in the areas of education, enforcement, and engineering to prevent deaths and injuries from motor vehicle accidents; and

18. Transportation Planning is responsible for *collecting, managing, and analyzing data to provide a single source of information to support MoDOT's decision process related to maintenance, construction, and reconstruction of the state transportation system; developing and tracking the five- (5-) Year Highway and Bridge Construction Schedule and the Statewide Transportation Improvement Program; mapping; and developing/ planning and coordinating a long range, total transportation system for MoDOT. This includes developing the long range transportation plan; developing, coordinating, and tracking the five- (5-) year Statewide Transportation Improvement Program; mapping; collecting, managing, and analyzing data to provide a single source of information to support MoDOT's decision process related to maintenance, construction, and reconstruction of the state transportation system; leading organizational performance management, including the production of MoDOT's quarterly performance management document, Tracker; and facilitating process improvement, customer satisfaction, and problem solving teams to improve operational performance.*

(3) How to Obtain Information. The official residence of the commission, as well as the offices of the director, chief counsel, commission secretary, and divisions of MoDOT, is the Missouri Department of Transportation Building in Jefferson City, Missouri. Written inquiries by the public should be addressed to the Commission Secretary, Missouri Department of Transportation Building, PO Box 270, Jefferson City, MO 65102. The general information telephone number is (573) 751-2551. Inquiries may be made via email to com-

ments@modot.mo.gov. Information from any district office of the department may be obtained in person, by writing, or by telephoning the District Engineer, Missouri Department of Transportation: Northwest District, 3602 North Belt Highway, St. Joseph, MO 64506-1399, (816) 387-2350; Northeast District, 1711 South Highway 61, [PO Box 1067,] Hannibal, MO 63401, (573) 248-2490; Kansas City District, 600 NE Colbern Rd., Lee's Summit, MO 64086, (816) 622-6500; Central District, 1511 Missouri Boulevard, PO Box 718, Jefferson City, MO 65102, (573) 751-3322; St. Louis District, 1590 Woodlake Drive, Chesterfield, MO 63017, (314) 275-1500; Southwest District, 3025 East Kearney, PO Box 868, Springfield, MO 65801, (417) 895-7600; and Southeast District, 2675 N. Main Street, PO Box 160, Sikeston, MO 63801, (573) 472-5333.

AUTHORITY: section 536.023, RSMo Supp. 2013. Original rule filed Oct. 14, 1976, effective March 1, 1977. For intervening history, please consult the Code of State Regulations. Amended: Filed Aug. 4, 2016.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Transportation, Pam Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance
Storage Tanks
Chapter 2—Underground Storage Tanks—Technical
Regulations**

PROPOSED AMENDMENT

10 CSR 26-2.010 Applicability. The commission is amending sections (2) and (3) and adding a new section (4) to this rule.

PURPOSE: There are two (2) primary purposes for this rulemaking. The first is to open UST rules in Title 10, Division 26 of the Code of State Regulations to make the necessary changes required by the U.S. Environmental Protection Agency (EPA). The 2005 Energy Policy Act required either financial responsibility for UST installers and manufacturers or secondary containment for all new systems. In addition, last October, EPA adopted changes to the federal UST regulations that need to be incorporated into state regulation. This rulemaking will make the necessary changes to comply with these EPA grant requirements and to incorporate the changes made to the federal regulations.

The second reason is to incorporate state-specific changes. The proposed changes would better ensure that old tanks are still functional enough to remain in use. The changes would better prevent and detect leaks, establish clearer and more detailed new system requirements, and incorporate new technologies. The department will also take this opportunity to clarify ambiguous or confusing language and update industry standard referenced in the regulations.

(2) The following UST systems are excluded from the requirements of this chapter:

(A) Any UST system holding hazardous wastes listed or identified

in the Missouri Hazardous Waste Management Law, sections 260.350–260.434, RSMo, and the rules promulgated thereunder or a mixture of hazardous waste and other regulated substances, except for [waste] used oil as defined in 10 CSR 25-11.279;

(3) *[Deferrals]* **Partial Exclusions.** Rules 10 CSR 26-2.020–10 CSR 26-2.053 and closure requirements in 10 CSR 26-2.060–10 CSR 26-2.064 do not apply to any of the following types of UST systems:

(A) Wastewater treatment tank systems **not covered in subsection (2)(B) above**;

(C) Any UST system that is part of an emergency generator system at nuclear power generation facilities *[regulated]* **licensed by the Nuclear Regulatory Commission [under] and subject to the Nuclear Regulatory Commission requirements regarding design and quality criteria, including but not limited to, 10 CFR Part 50[, Appendix A]**;

(D) **Aboveground tanks associated with [A]airport hydrant fuel distribution systems; and**

(E) *[UST systems with]* **Aboveground tanks associated with field-constructed tanks.**

(4) **Previously deferred UST systems. Previously deferred airport hydrant fuel distribution systems, tank systems, and field constructed tanks systems must meet one (1) of the following options for compliance:**

(A) **Option 1. Owners and operators must document that the previously deferred UST is appropriate for continued use by providing proof of compliance with 10 CSR 26-2.020 through 10 CSR 26-2.048; or**

(B) **Option 2. Permanent closure of the UST system no later than July 1, 2019.**

(C) **New UST systems installed after July 1, 2017, must meet all requirements at installation.**

AUTHORITY: sections 319.100, 319.105, 319.107, 319.III, and 319.II4, RSMo 2000, and sections 319.109 and 319.137, RSMo Supp. [2010] 2013. This rule originally filed as 10 CSR 20-10.010. Original rule filed April 2, 1990, effective Sept. 28, 1990. Amended: Filed Jan. 2, 1996, effective Aug. 30, 1996. Moved and amended: Filed April 15, 2011, effective Dec. 30, 2011. Amended: Filed Aug. 15, 2016.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. The public entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate. The private entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on October 20, 2016, at the Elm Street Conference Center, 1730 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required. However, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on October 27, 2016. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on October 27, 2016. Email comments shall be sent to heather.peters@dnr.mo.gov.

Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1730 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance
Storage Tanks
Chapter 2—Underground Storage Tanks—Technical
Regulations**

PROPOSED AMENDMENT

10 CSR 26-2.011 Interim Prohibition for Deferred Underground Storage Tank Systems. The commission is proposing to delete sections (2) and (3) of this rule.

PURPOSE: There are two (2) primary purposes for this rulemaking. The first is to open UST rules in Title 10, Division 26 of the *Code of State Regulations* to make the necessary changes required by the U.S. Environmental Protection Agency (EPA). The 2005 Energy Policy Act required either financial responsibility for UST installers and manufacturers or secondary containment for all new systems. In addition, last October, EPA adopted changes to the federal UST regulations that need to be incorporated into state regulation. This rulemaking will make the necessary changes to comply with these EPA grant requirements and to incorporate the changes made to the federal regulations.

The second reason is to incorporate state-specific changes. The proposed changes would better ensure that old tanks are still functional enough to remain in use. The changes would better prevent and detect leaks, establish clearer and more detailed new system installation requirements, outline the requirements for new USTs at marinas, and incorporate new technologies. The department will also take this opportunity to clarify ambiguous or confusing language and update industry standard referenced in the regulations.

[(2) Notwithstanding section (1) of this rule, a UST system without corrosion protection may be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life. Owners and operators must maintain records that demonstrate compliance with the requirements of this section for the remaining life of the tank.]

[(3)The determination in section (2) of this rule should comply with the following recommended practice: NACE International RP 0285-2002, Corrosion Control of Underground Storage Tank Systems by Cathodic Protection, revised 2002. This document is incorporated by reference without any later amendments or modifications. To obtain a copy contact NACE International, Box 218340, Houston, TX 77218-8340, (713) 492-0535, www.nace.org.]

AUTHORITY: section 319.105, RSMo 2000, and section 319.137, RSMo Supp. [2010] 2013. This rule originally filed as 10 CSR 20-10.011. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011, effective Dec. 30, 2011. Amended: Filed Aug. 15, 2016.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. The public entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate. The private

entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on October 20, 2016, at the Elm Street Conference Center, 1730 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required. However, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on October 27, 2016. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on October 27, 2016. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1730 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance
Storage Tanks
Chapter 2—Underground Storage Tanks—Technical
Regulations**

PROPOSED AMENDMENT

10 CSR 26-2.012 Definitions. The commission is proposing to amend section (1) of this rule.

PURPOSE: There are two (2) primary purposes for this rulemaking. The first is to open UST rules in Title 10, Division 26 of the Code of State Regulations to make the necessary changes required by the U.S. Environmental Protection Agency (EPA). The 2005 Energy Policy Act required either financial responsibility for UST installers and manufacturers or secondary containment for all new systems. In addition, last October, EPA adopted changes to the federal UST regulations that need to be incorporated into state regulation. This rulemaking will make the necessary changes to comply with these EPA grant requirements and to incorporate the changes made to the federal regulations.

The second reason is to incorporate state-specific changes. The department will also take this opportunity to clarify ambiguous or confusing language and update industry standard referenced in the regulations.

(1) Many definitions relevant to this rule are set forth in the underground storage tank (UST) law in section 319.100, RSMo. [The regulations set forth in 40 CFR part 280.12, July 1, 2010, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions. The definitions set forth in 40 CFR 280.12, are subject to the following additions, modifications, substitutions, or deletions in the subsections:]

(A) Definitions beginning with the letter A.

1. "Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of a UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system.

2. "Airport hydrant fuel distribution system" (also called

airport hydrant system) means a UST system which fuels aircraft and operates under high pressure that typically terminates into one (1) or more hydrants (fill stands). The airport hydrant system begins where fuel enters one (1) or more tanks from an external source such as a pipeline, barge, rail car, or other motor fuel carrier.

3. "Ancillary equipment" means any devices used to distribute, meter, or control the flow of regulated substances to and from a UST including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps.

[1.]4. "Annual" means recurring, done, or performed every three hundred sixty-five (365) days.

[2.]5. "Annually" means at least once every three hundred sixty-five (365) days[;].

(B) Definitions beginning with the letter B. [(Reserved);]

1. "Belowground release" means any release to the subsurface of the land or to groundwater. This includes, but is not limited to, releases from the belowground portions of a UST system and belowground releases associated with overfills and transfer operations as the regulated substances move to or from a UST.

2. "Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

3. "Biannually" or "biannual" means recurring, done, or performed every six (6) months.

(C) Definitions beginning with the letter C.

1. "Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

2. "Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must be certified by NACE International, the Steel Tank Institute, or the International Code Council.

[1.]3. [To the definition of] "CERCLA" [at 40 CFR 280.12, incorporated in this rule, add the words "I means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986[" after the words "as amended";].

4. "Compatible" means the ability of two (2) or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

5. "Connected piping" means all piping including valves, elbows, joints, flanges, and flexible connectors attached to a UST system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two (2) UST systems should be allocated equally between them.

6. "Consumptive use" with respect to heating oil means consumed on the premises for heating purposes, typically in the operation of heating equipment, boilers, and furnaces.

7. "Containment sump" means a liquid-tight container that protects the environment by containing leaks and spills of regulated substances from piping, dispensers, pumps, and related components in the containment area.

8. "Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified by NACE International as a CP Technologist, CP Specialist, or

Senior Corrosion Technologist, or for sti-P3® tanks, a Steel Tank Institute certified Cathodic Protection Inspector.

(D) Definitions beginning with the letter D.

1. “*De minimus*” means—

A. Any volume of regulated substance(s) contained in a tank with a capacity of less than one hundred ten (110) gallons; or

B. A very low concentration of regulated substances; or

C. Any volume of regulated substance(s) contained in an emergency backup tank that holds regulated substances for only a short period of time and is expeditiously emptied after use. (Comment: *De minimus* tanks include: swimming pools, permitted wastewater treatment facilities, and chlorinated, potable water storage tanks. An oil-water separator is not a *de minimus* system unless the tank has a less than one hundred ten (110) gallon capacity.)

2. “Department,” unless otherwise stated, means the Missouri Department of Natural Resources[;].

3. “Dielectric material” means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

4. “Dispenser” means equipment located aboveground that dispenses regulated substances from the UST system.

5. “Dispenser system” means the dispenser and the equipment necessary to connect the dispenser to the underground storage tank system.

6. “Double-walled piping” is a pipe within a pipe, where the outer wall and inner walls are separated, the inner pipe is completely contained within the outer pipe, except for any single wall fittings or ends, which must be open to a leak-tight containment sump, and the space between the two (2) pipes can be used to monitor the integrity of both the inner and outer pipes.

(E) Definitions beginning with the letter E.

1. [In the definition for “existing tank system” in 40 CFR 280.12 incorporated in this rule, substitute the date “September 28, 1990” for the date “December 22, 1988”:] “Electrical equipment” means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

2. “Excavation zone” means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

(F) Definitions beginning with the letter F. [(Reserved);]

1. “Farm tank” is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. Farm includes fish hatcheries, rangeland, and nurseries with growing operations.

2. “Field-constructed tank” means an underground tank constructed in the field or location where it will be used to store a regulated substance. For example, a tank constructed of concrete that is poured on-site or a steel erected tank. This does not include field modifications to a factory-built tank.

3. “Flow-through process tank” is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

4. “Free product” refers to a regulated substance that is present as a non-aqueous phase liquid (e.g., liquid not dissolved in water).

(G) Definitions beginning with the letter G. [(Reserved);]

1. “Gathering lines” means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

(H) Definitions beginning with the letter H.

1. [This definition shall apply in lieu of the definition of “hazardous substance UST system” in 40 CFR 280.12 incorporated in this rule.] “Hazardous substance UST system” means a UST system that contains a hazardous substance defined in Section 101(14) of the CERCLA (but not including any substance regulated as a hazardous waste under the Missouri Hazardous Waste Management Law, sections 260.350–260.434, RSMo) or any mixture of these substances and petroleum, and which is not a petroleum [UST systems] storage tank[;].

2. “Heating oil” means petroleum that is No. 1, No. 2, No. 4—light, No. 4—heavy, No. 5—light, No. 5—heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one (1) of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

3. “Hydraulic lift tank” means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

(I) Definitions beginning with the letter I.

[1. The definition for “implementing agency” in 40 CFR 280.12 is not incorporated into this rule.]

[2.]1. The term “in-operation” means input or output that occurs on a regular basis for the tank’s intended purpose.

[3.]2. The terms “in-service” and “in-use” are equivalent and mean that the tank system contains more than one inch (1”) of a regulated substance or residue or three-tenths percent (0.3%) by weight of the total capacity of the UST system of regulated substance. A tank is considered to be in-service and in-use beginning with the first input of a regulated substance into the tank system.

[4.]3. The term “installer” means any person, partnership, corporation, company, business, firm, society, or association that installs part or all of an underground storage tank system[;].

(J) Definitions beginning with the letter J. [(Reserved);].

(K) Definitions beginning with the letter K. [(Reserved);].

(L) Definitions beginning with the letter L. [(Reserved);]

1. “Liquid trap” means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

(M) Definitions beginning with the letter M.

1. “Maintenance” means the normal operational upkeep to prevent an underground storage tank system from releasing regulated substances.

[1.]2. “Month,” unless otherwise stated, means thirty (30) days.

[2.]3. “Monthly” means at least once every thirty (30) days[;].

4. “Motor fuel” means a complex blend of hydrocarbons typically used in the operation of a motor engine, such as motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any blend containing one (1) or more of these substances (for example: motor gasoline blended with alcohol).

(N) Definitions beginning with the letter N.

1. [In the definition for “new tank system” in 40 CFR 280.12 incorporated in this rule, substitute the date “September 28, 1990” for the date “December 22, 1988”:] “Noncommercial purposes” with respect to motor fuel means not for resale.

(O) Definitions beginning with the letter O.

1. “On the premises where stored,” with respect to heating oil, means UST systems located on the same property where the stored heating oil is used.

[1.]2. [In the definition for “operational life” in 40 CFR 280.12 incorporated in this rule, substitute] “Operational life” refers to the period beginning when installation of the tank

system has commenced until the time the tank system is properly closed under [“]10 CSR 26-2.060-10 CSR 26-2.064[“ for “Subpart G”].

2. The terms “out-of-service” and “out-of-use” are equivalent and mean that the tank system has been emptied so that no more than one inch (1”) of regulated substance or residue or three-tenths percent (0.3%) by weight of the total capacity of the UST system remains.]

3. [The definition for “owner” in 40 CFR 280.12 is not incorporated in this rule, and the definition in section 319.100(9) RSMo shall be used instead;] “Operator” means any person in control of, or having responsibility for, the daily operation of a tank.

4. The terms “out-of-service” and “out-of-use” are equivalent and mean that the tank system has been emptied so that no more than one inch (1”) of regulated substance or residue or three-tenths percent (0.3%) by weight of the total capacity of the UST system remains.

5. “Overfill release” is a release that occurs when a tank is filled beyond its capacity, resulting in the discharge of the regulated substance to the environment.

6. “Owner” means any person who owned an underground storage tank immediately before the discontinuation of its use if not in use on August 28, 1989, or any person who owns an underground storage tank in use on or after August 28, 1989, excluding secured interest or lienholders exempted under section 319.100(9) RSMo.

(P) Definitions beginning with the letter P.

1. [The definition for “person” in 40 CFR 280.12 is not incorporated in this rule and the definition in section 319.100(11), RSMo, shall be used instead;] “Person” means any individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, the state and its political subdivisions, or any interstate body. “Person” also includes any consortium, joint venture, commercial entity, and the government of the United States.

2. “Petroleum” means gasoline, kerosene, diesel, lubricants, and fuel oil. This definition includes motor fuels, aviation gas, jet fuels, distillate fuel oils, residual fuel oils, and petroleum solvents.

3. “Petroleum storage tank,” in this chapter, means an underground storage tank system used to contain an accumulation of petroleum.

4. “Pipe or piping” means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.

5. “Pipeline facilities” (including gathering lines) are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

(Q) Definitions beginning with the letter Q. (Reserved);].

(R) Definitions beginning with the letter R.

1. [The definition for “regulated substance” in 40 CFR 280.12 is not incorporated in this rule and the definition in section 319.100(14), RSMo, shall be used instead.] “Regulated substance” includes:

A. Any substance defined in Section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (P.L. 96-510), as amended, but not including a substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act of 1976 (P.L. 94-580), as amended; and

B. Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure, sixty degrees (60°) Fahrenheit and fourteen and seven-tenths (14 7/10) pounds per square inch absolute, respectively; and

C. Any substance adopted by rule in accordance with federal laws referenced by Section 101(14) of the federal Comprehensive Environmental Response, Compensation, and

Liability Act (P.L. 96-510).

2. [The definition for “release” in 40 CFR 280.12 is not incorporated in this rule and the definition in section 319.100(15), RSMo, shall be used instead.] “Release” includes, but is not limited to, any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a petroleum storage tank into groundwater, surface water, or subsurface soils.

3. “Release detection” means determining whether a release of a regulated substance has occurred from the UST system into the environment or a leak has occurred into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

4. “Repair” means to restore to proper operating condition a tank, pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment, or other UST system component that has caused a release of product from the UST system or has failed to function properly.

5. “Replaced” or “replacement” means—

A. For a tank - to remove a tank and install another tank;

B. For piping - to remove fifty percent (50%) or more of piping and install other piping, excluding connectors, connected to a single tank or single compartment. For tanks with multiple piping runs, this definition applies independently to each piping run.

6. “Residential tank” is a tank located on property used primarily for dwelling purposes.

[3.].7. “Routinely contains regulated substance” means that a regulated substance regularly passes through the piping, but does not necessarily mean that the piping must continuously hold a regulated substance. Satellite lines, gravity piping, and remote fill lines, including lines from aboveground storage tank(s) to underground storage tank(s), all routinely contain a regulated substance. Vapor lines, including vent lines and vapor recovery lines, are not included;].

(S) Definitions beginning with the letter S.

1. “SARA” means the Superfund Amendments and Reauthorization Act of 1986.

2. “Secondary containment” or “Secondarily contained” means a release prevention and release detection system for a tank and/or piping. This system has an inner and outer barrier with an interstitial space that is monitored for leaks. This term includes containment sumps when used for interstitial monitoring of piping.

[1.].3. [In lieu of the definition for “septic tank” in 40 CFR 280.12, the definition for] “[s]Septic tank” [shall be] means any watertight, covered receptacle designed and constructed to receive the discharge of sewage, separate solids from liquid, digest organic matter, store liquids through a period of detention, and allow the clarified liquids to discharge to a soil treatment system;].

4. “Storm-water or wastewater collection system” means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

5. “Surface impoundment” is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

(T) Definitions beginning with the letter T.

1. “Tank” is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

[1.].2. “Triennial” means recurring, done, or performed every

one thousand ninety-five (1,095) days.

[2.]3. “Triennially” means at least once every one thousand ninety-five (1,095) days.

(U) Definitions beginning with the letter U.

1. [In the definition of “upgrade” in 40 CFR 280.12 incorporated in this rule, substitute the words “regulated substance” for the word “product.”] “Under-dispenser containment” or “UDC” means a containment sump underneath a dispenser system designed to prevent dispenser system leaks from reaching soil or groundwater.

2. [The definition of “underground storage tank” or “UST” found in 40 CFR 280.12 is not incorporated in this rule, and the definition in section 319.100(16), RSMo, shall be used instead.] “Underground area” means an underground room, such as a basement, cellar, shaft, or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

3. “Underground release” means any belowground release.

4. “Underground storage tank” is defined in section 319.100, RSMo and means any one (1) or combination of tanks, including pipes connected thereto, containing regulated product, the volume of which is ten percent (10%) or more beneath the surface of the ground, except as exempted in section 319.100(16), RSMo.

5. “Upgrade” means the addition or retrofit of some systems such as cathodic protection, lining, spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of regulated substance.

6. “UST system” or “Tank system” means an underground storage tank, all connected piping, ancillary equipment, and containment system, if any.

(V) Definitions beginning with the letter V. *(Reserved)*[:].

(W) Definitions beginning with the letter W. *[(Reserved)]*[:].

1. “Wastewater treatment tank” means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

(X) Definitions beginning with the letter X. *(Reserved)*[:].

(Y) Definitions beginning with the letter Y. *(Reserved)*[:].

(Z) Definitions beginning with the letter Z. *(Reserved)*.

AUTHORITY: sections 319.100, 319.105, 319.107, 319.111, and 319.114, RSMo 2000, and sections 319.109 and 319.137, RSMo Supp. [2010] 2013. This rule originally filed as 10 CSR 20-10.012. Original rule filed April 2, 1990, effective Sept. 28, 1990. For intervening history, please consult the Code of State Regulations. Amended: Filed Aug. 15, 2016.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. The public entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate. The private entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

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Any person may submit written comments on this rule action.

Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on October 27, 2016. be postmarked by midnight on October 27, 2016. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1730 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
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Chapter 2—Underground Storage Tanks—Technical
Regulations

PROPOSED RULE

10 CSR 26-2.013 UST Systems with Field-Constructed Tanks and Airport Hydrant Fuel Distribution Systems

PURPOSE: This rule contains the new requirements for the previously deferred field-constructed tanks and airport hydrant fuel distribution systems.

(1) Applicability. This rule applies to owners and operators of field-constructed tanks and airport hydrant fuel distribution systems.

(2) Deadline for compliance. Owners and operators of existing underground storage tank (UST) systems with field-constructed tanks or airport hydrant fuel distribution systems must comply with all of the requirements of 10 CSR 26-2.010 through 10 CSR 26-2.083, the financial responsibility requirements in 10 CSR 26-3, and operator training in 10 CSR 100-6.

(A) Immediately upon installation for any new UST systems installed after July 1, 2017.

(B) By July 1, 2019, for existing systems, except where such requirements are specifically excluded or amended by this rule.

(3) Corrosion protection. UST system components that routinely contain product and are in contact with an electrolyte, including soil, backfill, or water, must meet one (1) of the following:

(A) Performance Standards for New UST Systems, as defined by 10 CSR 26-2.020; or

(B) Be constructed of metal and cathodically protected, with the cathodic protection system complying with 10 CSR 26-2.031. Unprotected metal tanks must pass an integrity test, in accordance with 10 CSR 26-2.021 and 10 CSR 26-2.031, prior to the addition of cathodic protection. Unprotected steel piping cannot be upgraded and must be replaced.

(4) Spill and overfill prevention equipment. UST systems must be upgraded with the installation of spill and overfill prevention, in accordance with 10 CSR 26-2.020 and 10 CSR 26-2.030, except where “delivery” occurs through a dedicated pipeline permanently connected to the UST system(s). For these systems, owners and operators must have an alarm system and/or an approved plan to prevent releases due to overfill.

(5) Walkthrough inspections. In addition to the walkthrough inspections in 10 CSR 26-2.036, owners and operators must inspect the following additional areas for airport hydrant fuel distribution systems at least once every thirty (30) days if confined space entry according to the Occupational Safety and Health Administration under 29 CFR Part 1910 is not required, or at least annually if confined space entry is required, and must keep documentation of these walkthrough inspections in accordance with 10 CSR 26-2.036:

(A) Hydrant pits—visually check for any damage, remove any liquid or debris, and check for any leaks; and

(B) Hydrant piping vaults—check for any hydrant piping leaks.

(6) Applicability of closure requirements to previously closed UST systems. The department may require that the owner and operator of a UST system with a field-constructed tank system or an airport hydrant fuel distribution system permanently closed before April 30, 2017, assess the excavation zone and close the UST system in accordance with 10 CSR 26-2.060 through 10 CSR 26-2.064 if releases from the UST system, in the judgment of the department, pose a current or potential threat to human health and the environment.

(7) Release detection. Owners and operators of existing UST systems must comply with the release detection requirements mandated in 10 CSR 26-2.040 through 10 CSR 26-2.048 no later than July 1, 2020.

AUTHORITY: sections 319.100, 319.103, 319.105, 319.107, 319.111, 319.114, 319.117, 319.120, and 319.123, RSMo 2000, and sections 319.109 and 319.137, RSMo Supp. 2013. Original rule filed Aug. 15, 2016.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. The public entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

PRIVATE COST: This proposed rule will not cost private entities more than \$500 in the aggregate. The private entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

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PROPOSED AMENDMENT

10 CSR 26-2.019 New Installation Requirements. The commission is amending sections (1), (4), (6) through (11) and adding new sections (6), (9), and (10) and renumbering the sections accordingly.

PURPOSE: There are two (2) primary purposes for this rulemaking. The first is to open UST rules in Title 10, Division 26 of the Code of State Regulations to make the necessary changes required by the U.S. Environmental Protection Agency (EPA). The 2005 Energy Policy Act required either financial responsibility for UST installers and manufacturers or secondary containment for all new systems. In addition, last October, EPA adopted changes to the federal UST reg-

ulations that need to be incorporated into state regulation. This rule-making will make the necessary changes to comply with these EPA grant requirements and to incorporate the changes made to the federal regulations.

The second reason is to incorporate state-specific changes. The proposed changes would better ensure that old tanks are still functional enough to remain in use. The changes would better prevent and detect leaks, establish clearer and more detailed new system installation requirements, outline the requirements for new USTs at marinas, and incorporate new technologies. The department will also take this opportunity to clarify ambiguous or confusing language and update industry standard referenced in the regulations.

(1) Any installer who intends to install an underground storage tank (UST) or piping associated with a UST system for storage of a regulated substance must, at least [thirty (30)] **fourteen (14)** days before installing the tank or before piping replacement, notify the department by [letter or] approved form transmitted via email of intent to install a UST, except that this [thirty (30)] **fourteen (14)** day notice requirement may be waived by the department when a release is suspected or in other similarly urgent circumstances. The notification must provide the tank owner's name, installer name, the name and location of the facility where the UST or piping will be installed, the date that the installation is expected to commence, the date that the tank is expected to be brought in[-] use, UST system information, including tank material, size, manufacturer, piping material, piping type, and manufacturer, release detection equipment, and spill and overfill equipment. The installation notice is valid for one hundred eighty (180) days from receipt by the department and only for the UST system(s) listed on the notice. If installation does not commence within one hundred eighty (180) days of the date on which the department received the notice, a new installation notice must be submitted prior to commencing installation activities.

(4) Prior to installation of an [UST] **underground tank and/or UST system piping** intended to be used for storage of a regulated substance, the tank and/or [associated] piping must be tested, inspected, and measured in accordance with the manufacturer's requirements and in accordance with the pre-installation inspection, testing, and/or backfilling sections of either—

(6) When a new UST system is installed at a marina, the installer must comply with the Petroleum Equipment Institute's Recommended Practice 1000-2014, Recommended Practices for the Installation of Marina Fueling Systems, 2014 Edition or an alternative procedure approved by the department. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Petroleum Equipment Institute, Box 2380, Tulsa, OK 74101-2380, (918) 494-9696, www.pei.org.

[(7)](7) Should one (1) or more of a manufacturer's requirements contradict the recommended industry practice(s), the manufacturer's requirements shall be followed. Backfill materials must meet tank and piping manufacturers' specifications.

[(7)](8) The tank and piping system must pass a **one-tenth (0.1)** gallon/hour system tightness test before the system is brought in-operation. **The tank tightness test must be—**

(A) A tank tightness test method listed and conducted in accordance with the National Work Group on Leak Detection Evaluations certificate. To obtain a copy, download the appropriate certificate from www.nwglde.org; or

(B) A **one-tenth (0.1)** gallon/hour third party certified test conducted using the automatic tank gauge with the tank at least **ninety-five percent (95%)** full.

(9) For tank system installations on or after July 1, 2017, before

the UST system is brought in-operation—

(A) Spill and overflow prevention equipment must be tested in accordance with 10 CSR 26-2.030;

(B) Secondary containment sumps must be tested in accordance with 10 CSR 26-2.035; and

(C) All release detection equipment must be operability tested in accordance with 10 CSR 26-2.040 and 10 CSR 26-2.048.

(10) All new tanks must be tied down. Tie-down straps must meet the manufacturer's design specifications and be installed in locations and at a frequency prescribed by the manufacturer.

~~/(8)/~~(11) Until the installation is complete and the system is released by the installer to the owner/operator, the tank shall be monitored for leaks daily by using either—

(A) An approved release detection method, in accordance with 10 CSR 26-2.043; or

(B) Daily Inventory Liquid Measurements. Upon completion of initial post-installation tightness testing, daily measurements are based on the average of two (2) consecutive stick readings. A variation of no greater than twenty-six (26) gallons per week is allowed. Any suspected release, alarm, or inconclusive or failure result from these release detection methods must be reported and investigated in accordance with 10 CSR 26-2.050.

~~/(9)/~~(12) Upon the department's discovery of an installation that is not in compliance with the requirements of this rule, the department's authorized representative may require that the installation remain open and uncovered, or that no additional UST system work be conducted, until—

(A) The manufacturer approves the installation that deviates from their written guidelines, specifications, and instructions;

(B) The owner approves the installation; and

(C) The department approves the installation.

~~/(10)/~~(13) Any equipment repairs necessary during the installation must be manufacturer certified or approved, with supporting written documentation from the manufacturer.

~~/(11)/~~(14) Certification of Installation. All installers must ensure that one (1) or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with this rule by providing a certification of compliance:

(A) The installation has been inspected and approved by the department;

(B) All work listed in the manufacturer's installation checklists has been completed and submitted to the department; or

(C) The installer has complied with another method for ensuring compliance with this rule that is *[determined]* **pre-approved** by the department to be no less protective of human health and the environment.

AUTHORITY: sections 319.105, RSMo 2000. Original rule filed April 15, 2011, effective Dec. 30, 2011. Amended: Filed Aug. 15, 2016.

PUBLIC COST: The state changes in this rule are estimated to cost affected state agencies and political subdivisions six hundred seven dollars and fifty cents (\$607.50) annually to comply with the new requirements of this rule. A detailed fiscal note has been filed with the secretary of state. The public entity fiscal cost impacts for compliance with the federal standards that are being incorporated into this rule are accounted for in the federal rulemakings.

PRIVATE COST: The state changes in this rule are expected to cost private entities twenty-nine thousand seven hundred sixty-seven dollars and fifty cents (\$29,767.50) annually to comply with the new state requirements of this rule. A detailed fiscal note has been filed with the secretary of state. The private entity fiscal cost impacts for

compliance with the federal standards that are being incorporated into this rule are accounted for in the federal rulemakings.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on October 20, 2016, at the Elm Street Conference Center, 1730 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required. However, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on October 27, 2016. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on October 27, 2016. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1730 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

FISCAL NOTE

PUBLIC COST

I. RULE NUMBER

| |
|---|
| Rule Number and Name: 10 CSR 26-2.019 Applicability |
| Type of Rulemaking: Amendment |

II. SUMMARY OF FISCAL IMPACT

| Affected Agency or Political Subdivision | Estimated Cost of Compliance in the Aggregate |
|--|---|
| Federal, State, County, City owned or affiliated underground storage tank owners | <p>Fewer than 15 new piping installations each year with a combined annual total less than \$375</p> <p>And</p> <p>Anticipate less than 15 tanks each year that will need to be tied down that would not have otherwise been tied down \$2,000 per tank for a total of \$30,000 annually</p> <hr/> <p>Combined annual rule total less than \$30,375 x 2% publically owned = \$607.50 annually</p> |
| Missouri Department of Natural Resources | \$0 |

III. Worksheet

See calculations in Section IV below.

IV. Assumptions

The Department is proposing to require installation notifications for piping installations. Currently the regulation requires notification for new tank system installations only. When discussed during stakeholder meetings, most stakeholders thought that this was already required or felt most situations in which piping is currently being replaced are situations in which the Department is already aware of the replacement (piping failures, leaks, other piping issues). The Department already receives 'courtesy notifications' on piping replacements. Installation problems are one of the top 2 causes of new leaks in Missouri. As such, oversight of

installations is a significant way to prevent environmental contamination. Once the piping is installed, it is buried underground, making finding problems and potential leaks practically impossible. Identifying potential problems at installation is one of the most effective ways to prevent future releases. The cost to notify the Department is minimal: 15 minutes to complete the form and email it to the Department. The information included is readily available. The requirements after the notification remain the same. As such, the cost for each notification for each piping install, of which there are fewer than 15 each year, is less than \$25, with a combined annual total of less than \$375.

Another proposed change is to require new marinas to comply with the Petroleum Equipment Institute's Recommended Practice 1000-2009, Recommended Practices for the Installation of Marina Fueling Systems. These tanks are in environmentally sensitive areas, where a leak would impact water ecosystems almost immediately. In addition, these systems are uniquely configured, with the tanks typically above the dispensers, which could allow the tank to be siphoned by the dispensers. These configurations can lead to significant leaks in environmentally sensitive areas. The Department has been recommending the use of this guidance document since its publication in 2009. The Missouri Department of Agriculture has been requiring compliance with almost all, if not all of its significant pieces as well. The Department is not aware of any marina UST installations that have not complied with this guidance document in the last four years. As such, we do not believe that compliance with this proposed change has a new cost associated with it, but do believe it will ensure clear requirements and environmental protection in the future.

The Department is also adding an option for post-installation tightness testing. Currently the regulations only provide one option for testing the tank after installation, a tank tightness test. The proposed regulation will add a second option, testing the tank using the automatic tank gauge with the tank 95% full. As this is a new, second option, it does not add a cost, but instead lowers the cost by creating a new, potentially less costly option for compliance.

The final proposed change in this regulation is to require all new tanks be tied down. In the last three years, we have typically seen less than 10% of the tanks that are not tied down at install. With an average of 155 new tanks installed each year, that means that typically 15 tanks are not tied down. These tanks can float, leak product, cause damage to the site, hinder property sales, cause safety issues, and be a general nuisance. Based on information from installation contractors, the cost of a contractor- manufactured tie-down system is approximately \$2,000. Please note, though, that the costs to address tanks that float are much higher than \$2,000 per tank. They must be removed and leaks addressed. In addition, a tank that has floated can pose a significant safety hazard: it juts out of the ground; they can be difficult to see; they may cause vehicular damage; there are often open holes associated with them.

Of the 386 tanks installed since January 1, 2014, 9 of them (or approximately 2%) were publically/government owned. The remaining 98% were privately owned. For the purposes of this fiscal note, we will use these percentages for the calculations of public and private shares of the costs to the underground storage tank owners.

Cost of proposed amendments to rule 10 CSR 20-10.010 to the Department of Natural Resources

The Department of Natural Resources' Hazardous Waste Program already tracks these facilities and inspects their entire tank system, including monitoring systems. As such, there would be no additional cost to the department.

FISCAL NOTE

PRIVATE COST

I. RULE NUMBER

| |
|--|
| Rule Number and Name 10 CSR 26-2.019 Applicability |
| Type of Rulemaking Amendment |

II. SUMMARY OF FISCAL IMPACT

| Classification by types of the business entities which would likely be affected: | Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule: | Estimate in the aggregate as to the cost of compliance with the rule by the affected entities: |
|--|---|--|
| Owners of emergency generator tanks <ul style="list-style-type: none"> • Hospitals • Nursing or Health Care facilities • Communication facilities and structures (e.g. cellular phone companies) • Banks • Food storage facilities • Data storage facilities • Other owners and operators of underground storage tank systems | Fewer than 15 new piping installations each year Anticipate less than 15 tanks each year that will need to be tied down that would not have otherwise been tied down | Combined annual total less than \$375 \$2,000 per tank for a total of \$30,000 annually <hr/> Combined annual rule total less than \$30,375 x 98% privately owned – \$29,767.50 annually |

III. Worksheet

See calculations in Section IV below.

Fiscal Note for Proposed Rule 10 CSR 26-2.076
Page 2 of 3

IV. Assumptions

The Department is proposing to require installation notifications for piping installations. Currently the regulation requires notification for new tank system installations only. When discussed during stakeholder meetings, most stakeholders thought that this was already required or felt most situations in which piping is currently being replaced are situations in which the Department is already aware of the replacement (piping failures, leaks, other piping issues). The Department already receives ‘courtesy notifications’ on piping replacements. Installation problems are one of the top 2 causes of new leaks in Missouri. As such, oversight of installations is a significant way to prevent environmental contamination. Once the piping is installed, it is buried underground, making finding problems and potential leaks practically impossible. Identifying potential problems at installation is one of the most effective ways to prevent future releases. The cost to notify the Department is minimal: 15 minutes to complete the form and email it to the Department. The information included is readily available. The requirements after the notification remain the same. As such, the cost for each notification for each piping install, of which there are fewer than 15 each year, is less than \$25, with a combined annual total of less than \$375.

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Fiscal Note for Proposed Rule 10 CSR 26-2.076
Page 3 of 3

to the site, hinder property sales, cause safety issues, and be a general nuisance. Based on information from installation contractors, the cost of a contractor-manufactured tie-down system is approximately \$2,000. Please note, though, that the costs to address tanks that float are much higher than \$2,000 per tank. They must be removed and leaks addressed. In addition, a tank that has floated can pose a significant safety hazard: it juts out of the ground; they can be difficult to see; they may cause vehicular damage; there are often open holes associated with them.

Of the 386 tanks installed since January 1, 2014, 9 of them (or approximately 2%) were publically/government owned. The remaining 98% were privately owned. For the purposes of this fiscal note, we will use these percentages for the calculations of public and private shares of the costs to the underground storage tank owners.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance
Storage Tanks
Chapter 2—Underground Storage Tanks—Technical
Regulations

PROPOSED AMENDMENT

10 CSR 26-2.020 Performance Standards for New Underground Storage Tank Systems. The commission is proposing to amend section (1) of this rule.

PURPOSE: There are two (2) primary purposes for this rulemaking. The first is to open UST rules in Title 10, Division 26 of the Code of State Regulations to make the necessary changes required by the U.S. Environmental Protection Agency (EPA). The 2005 Energy Policy Act required either financial responsibility for UST installers and manufacturers or secondary containment for all new systems. In addition, last October, EPA adopted changes to the federal UST regulations that need to be incorporated into state regulation. This rulemaking will make the necessary changes to comply with these EPA grant requirements and to incorporate the changes made to the federal regulations.

The second reason is to incorporate state-specific changes. The proposed changes would better ensure that old tanks are still functional enough to remain in use. The changes would better prevent and detect leaks, establish clearer and more detailed new system requirements, and incorporate new technologies. The department will also take this opportunity to clarify ambiguous or confusing language and update industry standard referenced in the regulations.

(1) In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the underground storage tank (UST) system is used to store regulated substances, all owners and operators of new UST systems must meet the following requirements:

(A) Tanks. Each tank must be properly designed and constructed, and any portion underground that routinely contains a regulated substance must be protected from corrosion, in accordance with a code of practice developed by a nationally-recognized association or independent testing laboratory as [follows:] **specified in paragraphs 1. through 5. of this subsection. In addition, all new or replaced tanks where installation began on or after July 1, 2017, must be double-walled in accordance with paragraph 5. of this subsection—**

1. The tank is constructed of fiberglass-reinforced plastic and complies with—

A. Underwriters' Laboratories Standard 1316, *Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohol and Alcohol-Gasoline Mixtures*, revised 2006. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Underwriters' Laboratories, 333 Pfingsten Road, Northbrook, IL 60062-2096, (847) 272-8800, www.ul.com; or

B. Other standards or publications approved by the department; or

2. The tank is constructed of steel and cathodically protected in the following manner:

A. The tank is coated with a suitable dielectric material;

B. Field-installed cathodic protection systems are designed by a corrosion expert;

C. Impressed current systems are designed to allow determination of current operating status as required in 10 CSR 26-2.031(1)(C);

D. Cathodic protection systems are operated and maintained in accordance with 10 CSR 26-2.031 or according to guidelines established by the department; and

E. The following codes and standards may be used to comply

with paragraph (1)(A)2. of this rule:

(I) Steel Tank Institute *Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks*, revised 2010. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Steel Tank Institute, 944 Donata Court, Lake Zurich, IL 60047, (708) 438-8265, www.steeltank.com;

(II) Steel Tank Institute Standard F841, *Standard for Dual Wall Underground Steel Storage Tanks*, revised 2006. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Steel Tank Institute, 944 Donata Court, Lake Zurich, IL 60047, (708) 438-8265, www.steeltank.com;

[[III]](III) Underwriters' Laboratories Standard 1746, *Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks*, revised 2007. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Underwriters' Laboratories, 333 Pfingsten Road, Northbrook, IL 60062-2096, (847) 272-8800, www.ul.com;

[[III]](IV) NACE International RP 0285-2002, *Corrosion Control of Underground Storage Tank Systems by Cathodic Protection*, revised 2002. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact NACE International, Box 218340, Houston, TX 77218-8340, (713) 492-0535, www.nace.org;

[[IV]](V) Underwriters' Laboratories Standard 58, *Standard for Steel Underground Tanks for Flammable and Combustible Liquids*, revised 1998. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Underwriters' Laboratories, 333 Pfingsten Road, Northbrook, IL 60062-2096, (847) 272-8800, www.ul.com; or

3. The tank is a composite tank with a steel inner tank and a non-metallic external thick film coating or the tank is a steel inner tank constructed with a non-metallic external jacket forming a secondary wall. Either of these tanks shall comply with one (1) of the following industry codes:

A. Underwriters' Laboratories Standard 1746, *Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks*, revised 2007. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Underwriters' Laboratories, 333 Pfingsten Road, Northbrook, IL 60062-2096, (847) 272-8800, www.ul.com;

B. Steel Tank Institute's ACT-100, *Specification for External Corrosion Protection of FRP Composite Steel USTs (F894)*, revised June 2010. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Steel Tank Institute, 944 Donata Court, Lake Zurich, IL 60047, (708) 438-8265, www.steeltank.com;

C. Underwriters' Laboratories Standard 58, *Standard for Safety for Steel Underground Storage Tanks for Flammable and Combustible Liquids*, revised 1998. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Underwriters' Laboratories, 333 Pfingsten Road, Northbrook, IL 60062-2096, (847) 272-8800, www.ul.com; [or]

D. Steel Tank Institute's ACT-100-U, *Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks*, F961, June 2010. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Steel Tank Institute, 944 Donata Court, Lake Zurich, IL 60047, (708) 438-8265, www.steeltank.com; or

E. Steel Tank Institute's Specification F922, *Steel Tank Institute Specification for Permatank*, revised 2013. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Steel Tank Institute, 944 Donata Court, Lake Zurich, IL 60047, (708) 438-8265, www.steeltank.com; or

[4. The tank is constructed of metal without additional corrosion protection measures provided that—

A. The tank is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operating life; and

B. Owners and operators maintain records that demonstrate compliance with the requirements of subparagraph (1)(B)4.A. of this rule for the remaining life of the tank; or;

[5.]4. The tank construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than paragraphs (1)(A)1.–[4]3. of this rule;

5. Tanks installed on or after July 1, 2017, must be double-walled. A double-walled tank is a tank within a tank, where the outer walls and inner walls are separated, the inner tank is contained within the outer tank to a minimum of ninety-five percent (95%) containment and has an interstitial space capable of being monitored;

(B) Piping. The piping that routinely contains regulated substances and is in contact with an electrolyte, including but not limited to, soil, backfill, and/or water, must be properly designed, constructed, and protected from corrosion [in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as follows:] as specified in paragraphs 1. through 4. of this subsection. In addition, all new piping systems where installation began on or after July 1, 2017, must be double-walled in accordance with paragraph 5. of this subsection. If more than fifty percent (50%) of any tank system's piping is replaced within any twelve (12) month period, the entire piping run must be double-walled in accordance with paragraph 5.

1. The piping is constructed of [fiberglass reinforced plastic] an approved, non-corrodible material[.];

2. The following codes and standards may be used to comply with paragraph (1)(B)1. of this rule:

A. Underwriters' Laboratories Standard 971, *UL Listed Nonmetallic Underground Piping for Flammable Liquids*, revised 2006. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Underwriters' Laboratories, 333 Pfingsten Road, Northbrook, IL 60062-2096, (847) 272-8800, www.ul.com; and

B. Underwriters' Laboratories Standard 567, *Emergency Breakaway Fittings, Swivel Connectors and Pipe Connection Fittings for Petroleum Products and LP-Gas*, revised 2003. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Underwriters' Laboratories, 333 Pfingsten Road, Northbrook, IL 60062-2096, (847) 272-8800, www.ul.com[.];

3. After July 1, 2017, metal piping may not be installed unless it is completely enclosed within a containment sump, except existing flexible connectors may be replaced without a containment sump if the new flexible connector is protected from corrosion by isolating it from the backfill using a manufacturer-approved isolation boot or protecting the connector from corrosion in accordance with this paragraph. For existing piping, [T]the piping is constructed of steel and cathodically protected in the following manner:

A. The piping is coated with a suitable dielectric material;

B. Field-installed cathodic protection systems are designed by a corrosion expert;

C. Impressed current systems are designed to allow determination of current operating status as required in 10 CSR 26-2.031(1)(C);

D. Cathodic protection systems are operated, inspected, and maintained in accordance with 10 CSR 26-2.031; and

E. The [following] codes and standards in 10 CSR 26-2.031(2) may be used to comply with paragraph (1)(B)3. of this

rule[.];

(I) National Fire Association Standard 30, *Flammable and Combustible Liquids Code*, revised 2008. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the National Fire Protection Association, 1 Batterymarch Park, Box 9101, Quincy, MA 02269-9101, (617) 770-3000, www.nfpa.org;

(II) American Petroleum Institute's Recommended Practice 1615, *Installation of Underground Petroleum Storage Systems*, fifth edition, 2011. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/standards/;

(III) American Petroleum Institute Publication 1632, *Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems*, revised 2002. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/standards/;

(IV) NACE International SP-0169-2007, *Control of External Corrosion on Submerged Metallic Piping Systems*, revised 2007. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact NACE International, Box 218340, Houston, TX 77218-8340, (713) 492-0535, www.nace.org; and

(V) Steel Tank Institute's Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems (R892), revised 2006. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Steel Tank Institute, 944 Donata Court, Lake Zurich, IL 60047, (708) 438-8265, www.steel tank.com;

4. The piping is constructed of metal without additional corrosion protection measures provided that—

A. The piping is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life; and

B. Owners and operators maintain records that demonstrate compliance with the requirements of subparagraph (1)(A)4.A. of this rule for the remaining life of the tank;

5. The following codes may be used to comply with paragraph (1)(B)4. of this rule:

A. National Fire Protection Association Standard 30, *Flammable and Combustible Liquids Code*, revised 2008. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the National Fire Protection Association, 1 Batterymarch Park, Box 9101, Quincy, MA 02269-9101, (617) 770-3000; www.nfpa.org; and

B. NACE International SP-0169-2007, *Control of External Corrosion on Submerged Metallic Piping Systems*, revised 2007. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact NACE International, Box 218340, Houston, TX 77218-8340, (713) 492-0535, www.nace.org; or]

[6.]4. The piping construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in paragraphs (1)(B)1.–[5]3. of this rule[.];

5. After July 1, 2017, new or replaced piping must be double-walled piping, except for any single wall fittings or ends,

which must be open to a leak-tight containment sump(s), except for safe suction piping that meets the requirements of 10 CSR 26-2.041(1)(B)2.A. through E.;

(C) Spill and Overfill Prevention Equipment.

1. Except as provided in paragraph (1)(C)2. of this rule, to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use the following spill and overfill prevention equipment:

A. Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin). All delivery hose-fill pipe connections must be tight, lock-on connections; and

B. Overfill prevention equipment that will—

(I) Automatically shut off flow into the tank when the tank is no more than ninety-five percent (95%) full;

(II) Alert the transfer operator with a high-level alarm at least one (1) minute before overfilling with an alarm audible in the delivery area; or

(III) Alert the transfer operator when the tank is no more than ninety percent (90%) full by restricting flow into the tank.

(a) Ball float valves may only be used in tank systems with gravity deliveries, in suction systems if there are no check valves, except those contained within a building, and the tank system is tight so that it does not allow vapors to be released during a delivery after the ball float valve has closed.

(b) Ball float valves are not approved for use as overfill prevention equipment in new tank systems installed after December 31, 2011. *[Ball float valves may still be used in systems equipped with manifolded vent lines and vapor recovery equipment if the ball valve is installed no lower than ninety-eight percent (98%) full and the functioning overfill equipment is installed no higher than ninety-five percent (95%) full.]*

(c) When an overfill prevention device is replaced after July 1, 2017, a ball float valve may not be used.

(IV) For pressurized deliveries, overfill prevention equipment must be compatible and approved for use with pressurized deliveries[.];

C. All spill and overfill prevention equipment must be installed, inspected, maintained, and replaced in accordance with 10 CSR 26-2.030.

2. Owners and operators are not required to use the spill and overfill prevention equipment specified in paragraph (1)(C)1. of this rule if—

A. Alternative equipment is used that is determined by the department to be no less protective of human health and the environment than the equipment specified in subparagraph (1)(C)1.A. or B. of this rule; or

B. The owner or operator submits a written explanation that the equipment cannot be used for the UST system and their detailed fuel-delivery plan, documenting that their delivery procedures prevent spills and overfills; or

C. The UST system is filled by transfers of no more than twenty-five (25) gallons at one (1) time[.];

(D) *[All new tank systems installed after December 31, 2011, must be installed with containment sumps at each tank top suction piping or submersible turbine pump connection, each piping transition/ball valve location, and under each dispenser. The containment sumps must be designed to contain any leak from the primary UST piping system; and] For new or replaced tanks or piping systems installed after July 1, 2017, containment sumps must be installed at each tank top suction piping or submersible turbine pump connection, each piping transition, ball valve, or single-walled fitting location, and under each dispenser. The containment sump must be liquid-tight on its sides, bottom, and at any penetrations, with interstitial monitoring in accordance with 10 CSR 26-2.043(1)(H) and sump testing in accordance with 10 CSR 26-2.035;*

(E) Dispenser Systems. Any new dispenser system installed after July 1, 2017, must have a containment sump beneath it.

1. A dispenser system is considered new when both the dispenser and the equipment needed to connect the dispenser to the underground storage tank system are installed or replaced at a UST facility. The equipment necessary to connect the dispenser to the UST system includes check valves, shear valves, unburied risers and flexible connectors, and other transitional components that are underneath the dispenser and connect the dispenser to the underground UST system piping.

2. Under-dispenser containment must be liquid-tight on its sides, bottom, and at any penetrations and must allow for visual inspection and access to the components in the containment sump and be tested or monitored for leaks from the dispenser system in accordance with 10 CSR 26-2.035;

[(E)](F) Installation. All tanks and piping must be properly installed in accordance with a code of practice developed by a nationally-recognized association or independent testing laboratory, in accordance with all manufacturers' instructions, and in accordance with 10 CSR 26-2.019. Tank and piping system installation practices and procedures described in the following codes of practice may be used to comply with the requirements of this rule:

1. American Petroleum Institute Publication 1615, *Installation of Underground Petroleum Storage System*, revised 2011. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/standards/; or

2. Petroleum Equipment Institute Publication RP100, *Recommended Practices for Installation of Underground Liquid Storage Systems*, revised 2011. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Petroleum Equipment Institute, Box 2380, Tulsa, OK 74101-2380, (918) 494-9696, www.pei.org.

AUTHORITY: sections 319.105 and 319.107, RSMo 2000, and section 319.137, RSMo Supp. [2010] 2013. This rule originally filed as 10 CSR 20-10.020. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011, effective Dec. 30, 2011. Amended: Filed Aug. 15, 2016.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. The public entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rule-makings.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate. The private entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rule-makings.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on October 20, 2016, at the Elm Street Conference Center, 1730 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required. However, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on October 27, 2016. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on October 27, 2016. Email comments shall be sent to heather.peters@dnr.mo.gov.

Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1730 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance
Storage Tanks
Chapter 2—Underground Storage Tanks—Technical
Regulations

PROPOSED AMENDMENT

10 CSR 26-2.021 [Upgrading of Existing] Upgraded Underground Storage Tank Systems. The commission is proposing to change the title and amend the purpose statement of this rule, as well as sections (3) through (6) and also adding a new section (6) and renumbering the other sections accordingly.

PURPOSE: There are two (2) primary purposes for this rulemaking. The first is to open UST rules in Title 10, Division 26 of the Code of State Regulations to make the necessary changes required by the U.S. Environmental Protection Agency (EPA). The 2005 Energy Policy Act required either financial responsibility for UST installers and manufacturers or secondary containment for all new systems. In addition, last October, EPA adopted changes to the federal UST regulations that need to be incorporated into state regulation. This rule-making will make the necessary changes to comply with these EPA grant requirements and to incorporate the changes made to the federal regulations.

The second reason is to incorporate state-specific changes. The proposed changes would better ensure that old tanks are still functional enough to remain in use. The changes would better prevent and detect leaks and incorporate new technologies. The department will also take this opportunity to clarify ambiguous or confusing language and update industry standard referenced in the regulations.

PURPOSE: [This rule contains the options for upgrading existing underground storage tanks for continued operation after December 22, 1998.] This rule contains requirements for UST systems that were in use on December 22, 1998, and were upgraded with release prevention equipment.

(3) Tank Upgrading Requirements. Tanks must be upgraded to meet one (1) of the following requirements in accordance with a code of practice developed by a nationally-recognized association or independent testing laboratory:

[(A) Interior lining. A tank may be upgraded by internal lining if—

1. The lining is installed in accordance with the requirements of 10 CSR 25-2.033 and the following:

A. Lining manufacturer installation requirements; and
B. An approved national code or standard, including those listed in section (6) of this rule; and either

C. For steel tanks, structural integrity determinations are required and must include actual steel tank thickness readings. Approved integrity test methods are included in section (6) of this rule; or

D. For fiberglass-reinforced plastic tanks, all linings must be approved by the tank manufacturer and installed in accordance with the tank manufacturer's requirements.

2. Within ten (10) years after the initial lining, and every five (5) years after that, whether relined or not, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications; and

3. A tank may only be relined and/or the lining may only be repaired—

A. If the fiberglass-reinforced plastic tank meets all tank manufacturer standards for repair or relining of the tank; or

B. If the steel tank passes an integrity test, including actual steel shell thickness readings. Approved integrity test methods are included in section (6) of this rule;]

(A) Interior lining or Tank Retrofit. A tank may be upgraded by internal lining or retrofit if—

1. The lining is installed in accordance with the requirements of 10 CSR 26-2.033 and the lining or retrofit meets the following additional requirements:

A. All linings installed or repaired on or after January 1, 2020, must meet the design specifications of Underwriters Laboratories (UL) 1856 Outline of Investigation for Underground Fuel Tank Internal Retrofit Systems requirements;

B. Inspections and repairs must be conducted by a technician who is properly certified by NACE International or International Code Council (ICC);

C. The lining or retrofit is installed according to manufacturer installation requirements;

D. An approved national code or standard, including those listed in section (7) of this rule, is followed;

E. For fiberglass-reinforced plastic tanks, all linings must be approved by the tank manufacturer and installed in accordance with the tank manufacturer's requirements. If the tank manufacturer is no longer available or willing to repair the tank, the tank may be lined in accordance with—

(I) The manufacturer's requirements, or

(II) The Fiberglass Tank & Piping Institute T-95-1. Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks, Revised 1995. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Fiberglass Tank and Piping Institute, <http://www.fiberglasstankandpipe.com>; and

(III) By a technician who is properly certified by NACE International, International Code Council (ICC), or the American Composites Manufacturers Association;

F. All linings must be installed, inspected, repaired, and maintained in accordance with one (1) of the following:

(I) For UL 1856 Lining systems, single-walled, co-structural systems and linings installed prior to January 1, 2020:

(a) A lining may only be repaired if the steel tank passes an integrity test, including actual steel shell thickness readings. Approved integrity test methods are included in section (7) of this rule;

(b) A replacement lining may only be installed if the new lining meets the UL 1856 specifications and the steel tank passes an integrity test, including actual steel shell thickness readings. Approved integrity test methods are included in section (7) of this rule;

(c) The lining must be internally inspected at least every five (5) years and found to be structurally sound with the lining still performing in accordance with the original design specifications;

(II) For UL 1856 Upgrade systems, double-walled, co-structural systems:

(a) A lining may only be installed or repaired if the steel tank passes an integrity test, including actual steel shell thickness readings. Approved integrity test methods are included in section (7) of this rule; and

(b) The lining must be internally inspected at least every five (5) years and found to be structurally sound with the lining still performing in accordance with the original design specifications; or

(c) The interstitial lining space is electronically monitored, with passing sensor status reports for the most recent twelve (12) months, in accordance with 10 CSR 26-2.043 subsection (1)(H);

(III) For UL 1856 Structural systems, double-walled, self-structural systems—

(a) The lining must be internally inspected at least every five (5) years and found to be structurally sound with the lining still performing in accordance with the original design specifications; or

(b) The interstitial lining space is electronically monitored, with passing sensor status reports for the most recent twelve (12) months, in accordance with 10 CSR 26-2.043 subsection (1)(H);

G. All interior lining inspection reports must include photographs of the tank bottom, a representative tank side wall and a representative tank end, and documentation of the interior lining hardness and thickness readings, in accordance with the evaluation guidance document used;

(B) Cathodic Protection. A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of the performance standards for new UST systems in 10 CSR 26-2.020(1)(A)2.B.-D. and the integrity of the tank is ensured using one (1) of the following methods:

1. The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system. Structural integrity evaluations must include steel shell thickness readings and confirmation that the steel shell does not have any holes or perforations. Approved integrity test methods are included in section ~~[(6)]~~ (7) of this rule;

2. The tank has been installed for less than ten (10) years and is monitored monthly for releases in accordance with release detection methods in 10 CSR 26-2.043(1)(E)-(I);

3. The tank has been installed for less than ten (10) years and is assessed for corrosion holes by conducting two (2) tightness tests that meet the requirement of release detection method in 10 CSR 26-2.043(1)(D). The first tightness test must be conducted prior to installing the cathodic protection system. The second tightness test must be conducted between three and six (3-6) months following the first operation of the cathodic protection system; or

4. The tank is assessed for corrosion holes by a method that is determined by the department to prevent releases in a manner that is no less protective of human health and the environment than paragraphs (3)(B)1.-3. of this rule; and

(4) Piping Upgrading Requirements. Metal piping that routinely contains regulated substances and is in contact with an electrolyte, including but not limited to, soil, backfill, and/or water, must be cathodically protected *[in accordance with a code of practice developed by a nationally-recognized association or independent testing laboratory]* and must meet the requirements of 10 CSR 26-2.020(1)(B)3.B.-[D.].E.

(5) Spill and Overfill Prevention Equipment. To prevent spilling and overfilling associated with product transfer to the UST system, all existing UST systems must comply with new UST system spill and overfill prevention equipment requirements specified in 10 CSR 26-2.020(1)(C) and 10 CSR 26-2.030.

(6) Dispenser Systems. Any new dispenser installed after July 1, 2017, must have a containment sump beneath it, in accordance with 10 CSR 26-2.020(1)(E).

~~[(6)]~~(7) The following codes and standards may be used to comply with this rule:

(A) American Petroleum Institute Standard 1631, *Interior Lining and Periodic Inspection of Underground Storage Tanks*, revised 2001. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/standards/;

(B) NACE International RP 0285-2002, *Corrosion Control of*

Underground Storage Tank Systems by Cathodic Protection, revised 2002. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact NACE International, Box 218340, Houston, TX 77218-8340, (713) 492-0535, www.nace.org;

(C) American Petroleum Institute Publication 1632, *Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems*, revised 2002. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/standards/;

(D) American Society for Testing and Materials G158-98 (2010) *Standard Guide for Three Methods of Assessing Buried Steel Tanks*, revised 2010, Method B only. Methods A and C may not be used to evaluate the integrity of a steel tank. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, (610) 832-9500, www.astm.org; *and*

(E) National Leak Prevention Association Standard 631, *Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection*, revised 1999. This standard may only be used for interior lining application and inspection, not for inspection of the steel tank integrity. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the National Leak Prevention Association, (815) 301-2785, www.nlpa-online.org/; *and*

(F) Ken Wilcox Associates Recommended Practice, *Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera, September 28, 1999*. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact Ken Wilcox Associates, 1125 Valley Ridge Drive, Grain Valley, MO 64029, (816) 443-2494, www.kwaleak.com.

AUTHORITY: sections 319.105 and 319.107, RSMo 2000, and section 319.137, RSMo Supp. [2010] 2013. This rule originally filed as 10 CSR 20-10.021. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011, effective Dec. 30, 2011. Amended: Filed Aug. 15, 2016.

PUBLIC COST: The state changes in this rule are expected to cost state agencies or political subdivisions five hundred sixty dollars (\$560) one (1) time and one hundred twenty-six dollars (\$126) annually thereafter to comply with the new requirements of this rule. A detailed fiscal note has been filed with the secretary of state. The public entity fiscal cost impacts for compliance with the federal standards that are being incorporated into this rule are accounted for in the federal rulemakings.

PRIVATE COST: The state changes in this rule are expected to cost private entities seven thousand four hundred forty dollars (\$7,440) one (1) time and one thousand six hundred seventy-four dollars (\$1,674) annually thereafter to comply with the new requirements of this rule. A detailed fiscal note has been filed with the secretary of state. The private entity fiscal cost impacts for compliance with the federal standards that are being incorporated into this rule are accounted for in the federal rulemakings.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on October 20, 2016, at the Elm Street Conference Center, 1730 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required. However, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the

Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on October 27, 2016. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on October 27, 2016. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1730 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

FISCAL NOTE

PUBLIC COST

I. RULE NUMBER

| |
|---|
| Rule Number and Name: 10 CSR 26-2.021 Applicability |
| Type of Rulemaking: Amendment |

II. SUMMARY OF FISCAL IMPACT

| Affected Agency or Political Subdivision | Estimated Cost of Compliance in the Aggregate |
|--|--|
| Federal, State, County, City owned or affiliated underground storage tank owners | \$630 (every 5 years) or \$126 (annual) for the documentation requirements \$560 one-time cost split between all owners (7% of the one-time cost to one contractor) |
| Missouri Department of Natural Resources | \$0 |

III. Worksheet

See calculations in Section IV below.

IV. Assumptions

The Department is proposing changes to old, lined tanks that are typically beyond their warranty and life-expectancy. These regulations are being changed to ensure that these tanks are being inspected and repaired in a way that confirms that they remain leak-free as long as they are operational. EPA's UST regulation changes include modifications to the interior lining regulations. Specifically, their regulations require interior lined tanks be closed/replaced if the interior lining fails. The Department's proposed alternative requirements for interior linings, include:

- (1) Linings must meet the new UL 1856 installation standard,
- (2) Technicians must be certified (technicians must be certified to do work in almost every other aspect of UST service),
- (3) Documentation must include photographs,
- (4) An additional, less costly inspection option,
- (5) A new technology that allows repair of a lined tank that might otherwise, under the federal regulations, have to be closed.

While pieces of this regulation may be more costly than the new regulation, the proposed interior lining rule must be considered in its entirety as an alternative to the EPA federal regulation, including the closure requirement.

Furthermore, the Department is only aware of four companies that conduct interior lining installation and repair work in Missouri. Of those four companies, three of them already comply or are in the process of complying with the proposed regulations. As such, the proposed regulations have no associated increased costs to three of the four (including the two predominant companies) in Missouri. As the cost to permanently close a tank can be around \$15,000-\$20,000, the cost for the alternative interior lining rule package, which includes more detailed interior lining requirements, but doesn't require permanent closure in the event of a failure, is a less costly requirement than the federal version of the same rule package.

The one contractor that does not already meet the proposed regulations indicated that it would cost approximately \$8,000 total to comply with the training and certification requirements. This is a one-time cost, which we assume will be passed down to the tank owners (split between privately public owners). He indicated that he believed his product is already tested to be certified under UL1856; as such, there would be no additional costs to comply with this requirement for his company.

As for the additional documentation requirements, he indicated that he already does the additional documentation at some of the sites where he conducts interior lining inspections and installations. According to state records, he conducted approximately 13% of the interior lining inspections and installation; as he already complies with the additional documentation requirements at some of his sites, the Department used 10% of the lined tanks requiring additional documentation for the purposes of this RIR. The company that would need the additional documentation indicated that this would likely cost around \$250 per *facility* report. As we have about 900 active lined steel tanks at approximately 355 facilities, this would leave approximately 35 lined tank facilities that would need additional documentation for the lining inspections and installations. With an expected 36 facilities needing additional documentation, costing \$250 per facility report, we expect a total cost every five years (the interior lining inspection cycle) of \$9,000, so the average *annual* cost is \$1,800.

Based on our data, it appears that 93% of the sites are privately owned; the remaining 7% are publically owned.

Please note, the federal alternative would likely require permanent closure of some of these tanks, which could cost \$15,000-\$20,000 per tank.

Also included in this proposed rule is an additional, alternative interior lining inspection option. Some facilities opt to use interstitial monitoring to comply with tank release detection requirements. This monitoring could be used to meet the interior lining inspection. If a site is using interstitial monitoring, the Department could accept 12 months of interstitial monitoring records in lieu of the standard interior lining inspection. As an interior lining inspection can cost \$2,000-\$5,000 per tank, this is a potential significant cost savings per lined tank.

Cost of proposed amendments to rule 10 CSR 20-10.010 to the Department of Natural Resources
The Department of Natural Resources' Hazardous Waste Program already tracks these facilities and inspects their entire tank system, including monitoring systems. As such, there would be no additional cost to the department.

FISCAL NOTE

PRIVATE COST

I. RULE NUMBER

| |
|--|
| Rule Number and Name 10 CSR 26-2.021 Applicability |
| Type of Rulemaking Amendment |

II. SUMMARY OF FISCAL IMPACT

| Classification by types of the business entities which would likely be affected: | Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule: | Estimate in the aggregate as to the cost of compliance with the rule by the affected entities: |
|--|---|--|
| Owners of emergency generator tanks <ul style="list-style-type: none"> • Hospitals • Nursing or Health Care facilities • Communication facilities and structures (c.g. cellular phone companies) • Banks • Food storage facilities • Data storage facilities • Other owners and operators of underground storage tank systems | Approximately 900 tanks at 425 facilities 93% are privately owned Only one contractor indicated he did not meet the training requirements | \$8,370 (every 5 years) or \$1,674 (annually) \$7,440 one-time cost split between all owners (93% of the one-time cost to one contractor) |

III. Worksheet

See calculations in Section IV below.

Fiscal Note for Proposed Rule 10 CSR 26-2.076
Page 2 of 3

IV. Assumptions

The Department is proposing changes to old, lined tanks that are typically beyond their warranty and life-expectancy. These regulations are being changed to ensure that these tanks are being inspected and repaired in a way that confirms that they remain leak-free as long as they are operational. EPA's UST regulation changes include modifications to the interior lining regulations. Specifically, their regulations require interior lined tanks be closed/replaced if the interior lining fails. The Department's proposed alternative requirements for interior linings, include:

- (1) Linings must meet the new UL 1856 installation standard,
- (2) Technicians must be certified (technicians must be certified to do work in almost every other aspect of UST service),
- (3) Documentation must include photographs,
- (4) An additional, less costly inspection option,
- (5) A new technology that allows repair of a lined tank that might otherwise, under the federal regulations, have to be closed.

While pieces of this regulation may be more costly than the new regulation, the proposed interior lining rule must be considered in its entirety as an alternative to the EPA federal regulation, including the closure requirement.

Furthermore, the Department is only aware of four companies that conduct interior lining installation and repair work in Missouri. Of those four companies, three of them already comply or are in the process of complying with the proposed regulations. As such, the proposed regulations have no associated increased costs to three of the four (including the two predominant companies) in Missouri. As the cost to permanently close a tank can be around \$15,000-\$20,000, the cost for the alternative interior lining rule package, which includes more detailed interior lining requirements, but doesn't require permanent closure in the event of a failure, is a less costly requirement than the federal version of the same rule package.

The one contractor that does not already meet the proposed regulations indicated that it would cost approximately \$8,000 total to comply with the training and certification requirements. This is a one-time cost, which we assume will be passed down to the tank owners (split between privately public owners). He indicated that he believed his product is already tested to be certified under UL1856; as such, there would be no additional costs to comply with this requirement for his company.

As for the additional documentation requirements, he indicated that he already does the additional documentation at some of the sites where he conducts interior lining inspections and installations. According to state records, he conducted approximately 13% of the interior lining inspections and installation; as he already complies with the additional documentation requirements at some of his sites, the Department used 10% of the lined tanks requiring additional documentation for the purposes of this RIR. The

Fiscal Note for Proposed Rule 10 CSR 26-2.076

Page 3 of 3

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Please note, the federal alternative would likely require permanent closure of some of these tanks, which could cost \$15,000-\$20,000 per tank.

Also included in this proposed rule is an additional, alternative interior lining inspection option. Some facilities opt to use interstitial monitoring to comply with tank release detection requirements. This monitoring could be used to meet the interior lining inspection. If a site is using interstitial monitoring, the Department could accept 12 months of interstitial monitoring records in lieu of the standard interior lining inspection. As an interior lining inspection can cost \$2,000-\$5,000 per tank, this is a potential significant cost savings per lined tank.

Based on our data, it appears that 93% of the sites are privately owned; the remaining 7% are publically owned.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance
Storage Tanks
Chapter 2—Underground Storage Tanks—Technical
Regulations**

PROPOSED AMENDMENT

10 CSR 26-2.022 Notification Requirements. The commission is proposing to amend sections (1) and (2) of this rule.

PURPOSE: There are two (2) primary purposes for this rulemaking. The first is to open UST rules in Title 10, Division 26 of the *Code of State Regulations* to make the necessary changes required by the U.S. Environmental Protection Agency (EPA). The 2005 Energy Policy Act required either financial responsibility for UST installers and manufacturers or secondary containment for all new systems. In addition, last October, EPA adopted changes to the federal UST regulations that need to be incorporated into state regulation. This rulemaking will make the necessary changes to comply with these EPA grant requirements and to incorporate the changes made to the federal regulations.

The second reason is to incorporate state-specific changes. The department will also take this opportunity to clarify ambiguous or confusing language and update industry standard referenced in the regulations.

(1) Any owner who brings an underground storage tank (UST) system in-operation must, within thirty (30) days of bringing the tank [into] in-operation, register the completed UST system on forms provided by the department. Note: Owners and operators of UST systems that were in the ground on or after May 8, 1986, unless taken out-of-use on or before January 1, 1974, were required to notify the state in accordance with the Hazardous and Solid Waste Amendments of 1984, P.L. 98-616, on a form published by Environmental Protection Agency (EPA) on November 8, 1985 (50 FR 46602), unless notice was given pursuant to section 103(c) of Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). Owners and operators who have not complied with the notification requirements [may] **must** use a form/s provided approved by the department.

(2) [Notices required to be submitted under section (1) of this rule must provide all of the information requested in a form approved by the department for each UST.] **No later than July 1, 2019, owners of previously deferred UST systems must register their UST system(s) on forms approved by the department.**

AUTHORITY: sections 319.103, 319.105, 319.107, 319.111, 319.114, and 319.123, RSMo 2000, and section 319.137, RSMo Supp. [2010] 2013. This rule originally filed as 10 CSR 20-10.022. Original rule filed April 2, 1990, effective Sept. 28, 1990. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Aug. 15, 2016.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. The public entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate. The private entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COM-

MENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on October 20, 2016, at the Elm Street Conference Center, 1730 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required. However, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on October 27, 2016. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on October 27, 2016. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1730 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance
Storage Tanks
Chapter 2—Underground Storage Tanks—Technical
Regulations**

PROPOSED AMENDMENT

10 CSR 26-2.030 Spill and Overfill Control for In-Use Underground Storage Tank Systems. The commission is proposing to amend the title of this rule, adding new sections (3) through (8), and renumbering accordingly.

PURPOSE: There are two (2) primary purposes for this rulemaking. The first is to open UST rules in Title 10, Division 26 of the *Code of State Regulations* to make the necessary changes required by the U.S. Environmental Protection Agency (EPA). The 2005 Energy Policy Act required either financial responsibility for UST installers and manufacturers or secondary containment for all new systems. In addition, last October, EPA adopted changes to the federal UST regulations that need to be incorporated into state regulation. This rulemaking will make the necessary changes to comply with these EPA grant requirements and to incorporate the changes made to the federal regulations.

The second reason is to incorporate state-specific changes. The proposed changes would better ensure that old tanks are still functional enough to remain in use. The changes would better prevent and detect leaks, establish clearer and more detailed new system installation requirements, and incorporate new technologies. The department will also take this opportunity to clarify ambiguous or confusing language and update industry standard referenced in the regulations.

(3) Owners and operators must meet one (1) of the following requirements to ensure their spill prevention equipment is operating properly and will prevent releases to the environment:

(A) Have double-walled spill prevention equipment and monitor the space between the walls at least once every thirty (30) days; or

(B) The spill prevention equipment is tested at least triennially to ensure the spill prevention equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one (1) of the following:

1. Requirements developed by the manufacturer (Note: This option may only be used if the manufacturer has developed testing requirements. Self-testing apparatus may only be used if pre-approved by the department as a valid functionality test.); or

2. Interstitial test (for double-walled spill basins only) or spill containment test listed by the National Work Group on Leak

Detection Evaluations. To obtain copies of equipment certifications, contact the National Work Group for Leak Detection Evaluations, www.nwglde.org; or

3. Petroleum Equipment Institute RP 1200-12, *Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities*. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Petroleum Equipment Institute, Box 2380, Tulsa, OK 74101-2380, (918) 494-9696, www.pei.org; or

4. Other methods approved by the department, which may include a code of practice developed by a nationally recognized association or independent testing laboratory, determined to be no less protective of human health and the environment than the requirements listed in paragraphs 1. through 3. of this subsection.

(4) Spill basins may not be repaired with a partial or spot, field-applied repair kit, or product. Repairs must either be a manufacturer-designed replacement insert or a complete factory-built, field-installed complete spill basin repair kit. Other repairs may be approved by the department if they are determined to be no less protective of human health and the environment.

(5) Owners and operators must ensure their overfill prevention equipment is operating properly and will prevent releases to the environment. Overfill prevention equipment must be inspected or tested at least triennially. At a minimum, the test or inspection must ensure that overfill prevention equipment is set to activate at the correct level specified in 10 CSR 26-2.020 and will activate when the regulated substance reaches that level. Tests or inspections must be conducted in accordance with one (1) of the following criteria:

(A) Requirements developed by the manufacturer, but only if the test or inspection confirms that all portions of the overfill device are intact and functional. (Note: This option may be used if the manufacturer has developed testing requirements. Self-testing apparatus may only be used if approved by the department as a valid functionality test); or

(B) Petroleum Equipment Institute RP 1200-12, *Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities*. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Petroleum Equipment Institute, Box 2380, Tulsa, OK 74101-2380, (918) 494-9696, www.pei.org; or

(C) Other methods approved by the department, which may include a code of practice developed by a nationally recognized association or independent testing laboratory, determined to be no less protective of human health and the environment than the requirements listed in paragraphs 1. through 3. of subsection (3)(B).

(6) The first test of the spill equipment and the first test or inspection of the overfill prevention equipment required by this rule is due no later than January 1, 2020.

(7) If a tank has been out of use for more than twelve (12) months, equipment must be confirmed operational with a test of the spill prevention equipment and an inspection or test of the overfill prevention equipment, prior to bringing it back in-use.

(8) Owners and operators must maintain the following records, in accordance with 10 CSR 26-2.034, for spill and overfill prevention equipment:

(A) Test and/or inspection records must be maintained for three (3) years; and/or

(B) When using interstitial monitoring, records must be main-

tained for twelve (12) months.

[(3)](9) Guidance on spill and overfill prevention appears in the—

(A) American Petroleum Institute Publication 1621, *Recommended Practice for Bulk Liquid Stock Control at Retail Outlets*, revised 2001. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/standards/; [and]

(B) National Fire Protection Association Standard 30, *Flammable and Combustible Liquids Code*, revised 2008. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the National Fire Protection Association, 1 Batterymarch Park, Box 9101, Quincy, MA 02269-9101, (617) 770-3000, www.nfpa.org/;

(C) Petroleum Equipment Institute RP 1200-12, *Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities*. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Petroleum Equipment Institute, Box 2380, Tulsa, OK 74101-2380, (918) 494-9696, www.pei.org;

(D) National Fire Protection Association Standard 385, *Standard for Tank Vehicles for Flammable and Combustible Liquids*, revised 2012. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the National Fire Protection Association, 1 Batterymarch Park, Box 9101, Quincy, MA 02269-9101, (617) 770-3000, www.nfpa.org; and

(E) American Petroleum Institute Recommended Practice 1007, *Loading and Unloading of MC 306/DOT Cargo Tank Motor Vehicles*, revised 2011. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/standards.

AUTHORITY: sections 319.105 and 319.107, RSMo 2000, and section 319.137, RSMo Supp. [2010] 2013. This rule originally filed as 10 CSR 20-10.030. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011, effective Dec. 30, 2011. Amended: Filed Aug. 15, 2016.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. The public entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rule-makings.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate. The private entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rule-makings.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on October 20, 2016, at the Elm Street Conference Center, 1730 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required. However, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on October 27, 2016. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To

be accepted, written comments must be postmarked by midnight on October 27, 2016. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1730 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance
Storage Tanks
Chapter 2—Underground Storage Tanks—Technical
Regulations

PROPOSED AMENDMENT

10 CSR 26-2.031 Operation and Maintenance of Corrosion Protection. The commission is proposing to amend sections (1), (2), and (3) of the rule.

PURPOSE: There are two (2) primary purposes for this rulemaking. The first is to open UST rules in Title 10, Division 26 of the Code of State Regulations to make the necessary changes required by the U.S. Environmental Protection Agency (EPA). The 2005 Energy Policy Act required either financial responsibility for UST installers and manufacturers or secondary containment for all new systems. In addition, last October, EPA adopted changes to the federal UST regulations that need to be incorporated into state regulation. This rulemaking will make the necessary changes to comply with these EPA grant requirements and to incorporate the changes made to the federal regulations.

The second reason is to incorporate state-specific changes. The proposed changes would better ensure that old tanks are still functional enough to remain in use. The department will also take this opportunity to clarify ambiguous or confusing language and update industry standard referenced in the regulations.

(1) All owners and operators of [steel] metal underground storage tank (UST) systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented [for as long as the UST system is used to store regulated substances] until the system is permanently closed or has an out-of-use site assessment conducted in accordance with 10 CSR 26-2.060 through 10 CSR 26-2.064.

(D) For UST systems using cathodic protection, records of the operation of the cathodic protection system must be maintained [in accordance with 10 CSR 26-2.034/] to demonstrate compliance with the performance standards in this rule. These records must provide the following:

1. The results of the last three (3) inspections required in subsection (1)(C) of this rule; and
2. The results of testing from the last two (2) inspections required in subsection (1)(B) of this rule.

(2) The following codes and standards may be used to comply with this rule:

(A) NACE International RP 0285-2002, *Corrosion Control of Underground Storage Tank Systems by Cathodic Protection*, revised 2002. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact NACE International, Box 218340, Houston, TX 77218-8340, (713) 492-0535, www.nace.org; [or]

(B) NACE International TM0101-2001, *Standard Test Method, Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Tank Systems*, 2001 edition. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact NACE International, Box 218340, Houston, TX 77218-8340, (713) 492-0535, www.nace.org; [or]

(C) NACE International SP-0169-2007, *Control of External Corrosion on Submerged Metallic Piping Systems*, revised 2007. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact NACE International, Box 218340, Houston, TX 77218-8340, (713) 492-0535, www.nace.org;

(D) NACE International TM0497-2012, *Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems*, revised 2012. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact NACE International, Box 218340, Houston, TX 77218-8340, (713) 492-0535, www.nace.org;

[(C)](E) *Steel Tank Institute Cathodic Protection Testing Procedures for sti-P3 USTs, R051*, January 2006. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Steel Tank Institute, 944 Donata Court, Lake Zurich, IL 60047, (708) 438-8265, www.steeltank.com; [or]

[(D)](F) *Steel Tank Institute Recommended Practice for the Addition of Supplemental Anodes to sti-P3 USTs, R972*, December 2010. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Steel Tank Institute, 944 Donata Court, Lake Zurich, IL 60047, (708) 438-8265, www.steeltank.com./]; or

(G) *Steel Tank Institute Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems, R892, Revised January 2006*. To obtain a copy, contact the Steel Tank Institute, 944 Donata Court, Lake Zurich, IL 60047, (708) 438-8265, www.steeltank.com.

(3) If cathodic protection is being used to protect all or part of a UST system from corrosion, and the electric system energizing the cathodic protection has been off, unhooked, or damaged for more than ninety (90) days, the owner/operator must—

(A) Conduct a/n/ tank integrity test, documenting adequate tank shell integrity and thickness, as required in 10 CSR 26-2.021(3)(B); and

(B) Have a corrosion expert or design engineer re-evaluate the UST system, cathodic protection system, and surrounding structures and design and/or make changes to the existing cathodic protection system to meet the standards in 10 CSR 26-2.020(1)(A)2.B.-D.;

(C) Replace metal piping components;

[(C)](D) The owner/operator may request an additional ninety (90) days to repair the systems by submitting a request, including the justification for the extension; or

[(D)](E) Permanently close the tank, in accordance with 10 CSR 26-2.060 through 10 CSR 26-2.064.

AUTHORITY: sections 319.105 and 319.107, RSMo 2000, and section 319.137, RSMo Supp. [2010] 2013. This rule originally filed as 10 CSR 20-10.031. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011, effective Dec. 30, 2011. Amended: Filed Aug. 15, 2016.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. The public entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate. The private entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission

will hold a public hearing on this rule action and others beginning at 10:00 a.m. on October 20, 2016, at the Elm Street Conference Center, 1730 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required. However, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on October 27, 2016. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on October 27, 2016. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1730 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance
Storage Tanks
Chapter 2—Underground Storage Tanks—Technical
Regulations

PROPOSED AMENDMENT

10 CSR 26-2.032 Compatibility. The commission is proposing to add new sections (2) and (3) and renumbering accordingly.

PURPOSE: There are two (2) primary purposes for this rulemaking. The first is to open UST rules in Title 10, Division 26 of the *Code of State Regulations* to make the necessary changes required by the U.S. Environmental Protection Agency (EPA). The 2005 Energy Policy Act required either financial responsibility for UST installers and manufacturers or secondary containment for all new systems. In addition, last October, EPA adopted changes to the federal UST regulations that need to be incorporated into state regulation. This rulemaking will make the necessary changes to comply with these EPA grant requirements and to incorporate the changes made to the federal regulations.

The second reason is to incorporate state-specific changes. The proposed changes would better ensure that old tanks are still functional enough to remain in use. The changes would better prevent and detect leaks and incorporate new technologies. The department will also take this opportunity to clarify ambiguous or confusing language and update industry standard referenced in the regulations.

(2) Owners and operators must notify the department at least thirty (30) days prior to switching to a regulated substance containing greater than ten percent (10%) ethanol and/or greater than twenty percent (20%) biodiesel.

(3) Owners and operators may use one (1) or more of the following methods to demonstrate UST system compatibility with the regulated substance stored:

(A) Certification or listing of UST system components by a nationally recognized, independent testing laboratory for use with the regulated substance stored; or

(B) Equipment or component manufacturer approval. The manufacturer's approval must be in writing, indicate an affirmative statement of compatibility and functionality, specify the range of product blends with which the component is compatible, and be from the equipment or component manufacturer; or

(C) Another method determined by the department to be no less protective of human health and the environment than the methods listed in subsection (A) or (B) of this section.

[(2)](4) Owners and operators storing alcohol blends may use the following codes to comply with this rule:

(A) American Petroleum Institute [Publication] **Recommended Practice 1626, Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations, [revised 2001] 2010 Edition with 2012 Addendum.** This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/standards/; or

[(B)](B) American Petroleum Institute Publication 1627, *Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service stations, revised 2001.* This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/standards/; or

[(C)](B) Other standards or publications approved by the department.

AUTHORITY: section 319.105, RSMo 2000, and section 319.137, RSMo Supp. [2010] 2013. This rule originally filed as 10 CSR 20-10.032. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011, effective Dec. 30, 2011. Amended: Filed Aug. 15, 2016.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. The public entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate. The private entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

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Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on October 27, 2016. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on October 27, 2016. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1730 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance
Storage Tanks
Chapter 2—Underground Storage Tanks—Technical
Regulations

PROPOSED AMENDMENT

10 CSR 26-2.033 Repairs Allowed. The commission is proposing to

amend section (2) of this rule.

PURPOSE: There are two (2) primary purposes for this rulemaking. The first is to open UST rules in Title 10, Division 26 of the Code of State Regulations to make the necessary changes required by the U.S. Environmental Protection Agency (EPA). The 2005 Energy Policy Act required either financial responsibility for UST installers and manufacturers or secondary containment for all new systems. In addition, last October, EPA adopted changes to the federal UST regulations that need to be incorporated into state regulation. This rule-making will make the necessary changes to comply with these EPA grant requirements and to incorporate the changes made to the federal regulations.

The second reason is to incorporate state-specific changes. The proposed changes would better ensure that tanks are still functional enough to remain in use. The changes would better prevent and detect leaks, help provide better repairs, and incorporate new technologies. The department will also take this opportunity to clarify ambiguous or confusing language and update industry standard referenced in the regulations.

(2) The repairs must meet the following requirements:

(A) Repairs to UST systems must be properly conducted in accordance with a code of practice developed by a nationally-recognized association or an independent testing laboratory.

1. The following codes and standards may be used to comply with subsection (2)(A) of this rule:

A. National Fire Protection Association Standard 30, *Flammable and Combustible Liquids Code*, revised 2008. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the National Fire Protection Association, 1 Batterymarch Park, Box 9101, Quincy, MA 02269-9101, (617) 770-3000, www.nfpa.org;

B. National Fire Protection Association Standard 326, *Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair*, revised 2015. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the National Fire Protection Association, 1 Batterymarch Park, Box 9101, Quincy, MA 02269-9101, (617) 770-3000, www.nfpa.org;

[B.]C. American Petroleum Institute Publication 2200, *Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines*, revised 2001. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/standards/;

[C.]D. American Petroleum Institute Standard 1631, *Interior Lining and Periodic Inspection of Underground Storage Tanks*, revised 2001. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the American Petroleum Institute, 1220 L Street NW, Washington, DC 20005, (202) 682-8000, www.api.org/standards/; *and*

[D.]E. National Leak Prevention Association Standard 631, *Spill Prevention, Minimum 10-Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection*, revised 1999. This standard may only be used for interior lining application and inspection, not for integrity testing of the steel shell. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the National Leak Prevention Association, (815) 301-2785, www.nlpa-online.org; *and*

F. Fiberglass Tank and Piping Institute T-95-1, *Remanufacturing of Fiberglass Plastic (FRP) Underground Storage Tanks*, Revised 1995. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Fiberglass Tank and Piping Institute, <http://www.fiberglasstankandpipe.com>;

(C) Metal pipe sections and fittings that have released a regulated

substance as a result of corrosion or other damage must be replaced. For cathodically protected metal piping, the entire length of electrically-continuous metal pipe must be replaced. *[Fiberglass] Non-corroddible* pipes and fittings may be repaired in accordance with the manufacturer's specifications;

(E) Repaired tanks and/or piping must be tightness tested in accordance with release detection methods listed in 10 CSR 26-2.043(1)(D) and 10 CSR 26-2.044(1)(B) within thirty (30) days following the date of the completion of the repair, *[except as provided in the following paragraphs:] unless tested using another method that is determined by the department to be no less protective of human health and the environment;*

[1. The repaired tank is internally inspected in accordance with a code of practice developed by a nationally-recognized association or an independent testing laboratory;

2. The repaired portion of the UST system is monitored monthly for releases by one (1) of the release detection methods listed in 10 CSR 26-2.043(1)(B) and (E)-(I); or

3. Another test method is used that is determined by the department to be no less protective of human health and the environment than those listed in paragraphs (2)(E)1. and 2. of this rule;]

(F) Repairs of UST systems, or any portion of a UST system, required to be double-walled, must be tested to confirm the integrity of both walls of the repaired tank or piping system within thirty (30) days following the completion of any repair;

(G) Repairs to any required containment sumps must be tested using a method specified in 10 CSR 26-2.035(1)(B) within thirty (30) days following the completion of any repair;

(H) Within thirty (30) days following any repair to spill or prevention equipment, the repaired spill or overfill prevention equipment must be tested in accordance with 10 CSR 26-2.030 to ensure it is operating properly;

*[[F]](I) Within six (6) months following the repair of any cathodically protected UST system, the cathodic protection system must be tested with the methods of operation and maintenance of corrosion protection in 10 CSR 26-2.031(1)(B) and (C) to ensure that it is operating properly. Repair may include, but is not limited to, adjustments, maintenance, replacement, or changes to cathodic protection equipment and/or tank repairs; *and**

[[G]](J) If a tank is repaired by installation of an interior lining, the lining must be properly maintained and inspected, in accordance with 10 CSR 26-2.021(3)(A), for the life of the tank; and

*[[H]](K) UST system owners and operators must maintain records *[of]* demonstrating compliance with this rule for each repair for the remaining operating life of the UST system *[that demonstrate compliance with the requirement of this rule].**

AUTHORITY: sections 319.105 and 319.107, RSMo 2000, and section 319.137, RSMo Supp. [2010] 2013. This rule originally filed as 10 CSR 20-10.033. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011, effective Dec. 30, 2011. Amended: Filed Aug. 15, 2016.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. The public entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate. The private entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

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Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance
Storage Tanks
Chapter 2—Underground Storage Tanks—Technical
Regulations

PROPOSED AMENDMENT

10 CSR 26-2.034 Reporting and Record Keeping. The commission is proposing to amend section (1) of this rule.

PURPOSE: There are two (2) primary purposes for this rulemaking. The first is to open UST rules in Title 10, Division 26 of the **Code of State Regulations** to make the necessary changes required by the U.S. Environmental Protection Agency (EPA). The 2005 Energy Policy Act required either financial responsibility for UST installers and manufacturers or secondary containment for all new systems. In addition, last October, EPA adopted changes to the federal UST regulations that need to be incorporated into state regulation. This rulemaking will make the necessary changes to comply with these EPA grant requirements and to incorporate the changes made to the federal regulations.

The second reason is to incorporate state-specific changes. The proposed changes would better ensure that old tanks are still functional enough to remain in use. The changes would better prevent and detect leaks, outline the requirements for recordkeeping in the new rules, and incorporate new technologies. The department will also take this opportunity to clarify ambiguous or confusing language and update industry standard referenced in the regulations.

(1) Owners and operators of underground storage tank (UST) systems must cooperate fully with inspections, monitoring, and testing conducted by the department, or the department's authorized representative, as well as requests for document submission, testing, and monitoring [by the owner or operator].

(A) Reporting. Owners and operators must submit the following information to the department:

1. Notification for all UST systems [by] **subject to** the notification requirements in 10 CSR 26-2.022;
2. Reports of all releases including suspected releases (10 CSR 26-2.050), spills and overfills (10 CSR 26-2.053), and confirmed releases (10 CSR 26-2.071);
3. Corrective actions planned or taken including initial abatement measures (10 CSR 26-2.072), initial site characterization (10 CSR 26-2.074), free product removal (10 CSR 26-2.075), investigation of soil and groundwater cleanup (10 CSR 26-2.078), and corrective action plan (10 CSR 26-2.082); and
4. A notification before permanent closure or change in service (10 CSR 26-2.061).

(B) Record Keeping. Owners and operators must maintain the fol-

lowing information:

1. [A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (10 CSR 26-2.020(1)(A)4. and (1)(B)4.);] **Installation records for secondary containment of double-walled equipment, including tanks, piping, containment sumps, and spill basins, installed after July 1, 2017;**

2. Documentation of operation of corrosion protection equipment (10 CSR 26-2.031);

3. **Documents demonstrating compatibility of UST systems, including tanks, piping, release detection equipment, and all other ancillary equipment with the regulated substance being stored (10 CSR 26-2.032);**

[3.]4. Documentation of UST system repairs (10 CSR 26-2.033[(2)(H)]);

5. **Documentation demonstrating spill and overflow prevention equipment is being properly maintained, inspected, and tested (10 CSR 26-2.030);**

6. **Documentation of containment sump testing results (10 CSR 26-2.035);**

7. **Documentation of periodic walk-through inspections (10 CSR 26-2.036);**

[4.]8. Recent compliance with release detection requirements (10 CSR 26-2.04[5]8); [and]

[5.]9. Results of the site investigation conducted at permanent closure (10 CSR 26-2.064)[.]; and

10. **Documentation demonstrating compliance with the operator training rule (10 CSR 100-6).**

AUTHORITY: sections 319.107 and 319.111, RSMo 2000, and section 319.137, RSMo Supp. [2010] 2013. This rule originally filed as 10 CSR 20-10.034. Original rule filed April 2, 1990, effective Sept. 28, 1990. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Moved and amended: Filed April 15, 2011, effective Dec. 30, 2011. Amended: Filed Aug. 15, 2016.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. The public entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate. The private entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on October 20, 2016, at the Elm Street Conference Center, 1730 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required. However, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on October 27, 2016. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on October 27, 2016. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1730 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance
Storage Tanks
Chapter 2—Underground Storage Tanks—Technical
Regulations

PROPOSED RULE

10 CSR 26-2.035 Testing of Containment Sumps

PURPOSE: This rule contains the requirements for testing the newly required containment sumps associated with underground storage tank systems.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Owners and operators of underground storage tank (UST) systems with containment sumps required by 10 CSR 26-2.020 and/or 10 CSR 26-2.021, must ensure the continued integrity of required containment sumps by meeting one (1) of the following requirements:

(A) The containment sump has two (2) walls and the integrity of both walls is monitored annually; or

(B) The containment sump primary wall is tested at least triennially to ensure the equipment is liquid-tight by using vacuum, pressure, or liquid testing in accordance with one (1) of the following criteria:

1. Requirements developed by the manufacturer (Note: Owners and operators may use this option only if the manufacturer has developed testing requirements.);

2. An interstitial test or containment sump test listed by the National Work Group on Leak Detection Evaluations. To obtain copies of equipment certifications, contact the National Work Group for Leak Detection Evaluations, www.nwglde.org; or

3. Petroleum Equipment Institute RP 1200-12, *Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities*. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Petroleum Equipment Institute, Box 2380, Tulsa, OK 74101-2380, (918) 494-9696, www.pei.org; or

4. Another method approved by department, including code(s) of practice developed by a nationally recognized association(s) or independent testing laboratory(ies), determined to be no less protective of human health and the environment than the requirements listed in paragraphs 1. through 3. of this subsection.

(2) Owners and operators must maintain record(s) of the required containment sump monitoring for twelve (12) months or test(s) required by this rule until the next test is performed.

AUTHORITY: sections 319.105 and 319.107, RSMo 2000, and section 319.137, RSMo Supp. 2015. Original rule filed Aug. 15, 2016.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. The public entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate. The private entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

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Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance
Storage Tanks
Chapter 2—Underground Storage Tanks—Technical
Regulations

PROPOSED RULE

10 CSR 26-2.036 Operation and Maintenance Walkthrough Inspections

PURPOSE: This rule contains the new requirements for walkthrough inspections of underground storage tank systems.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) To properly operate and maintain underground storage tank (UST) systems, owners and operators must ensure the following requirements are met by the timeframes outlined in section (2):

(A) Conduct a walkthrough inspection that, at a minimum, checks the following equipment as specified below:

1. Every thirty (30) days, owners and operators must—

A. For spill prevention equipment - visually check for any damage; remove liquid or debris; check for and remove obstructions in the fill pipe, check the fill cap to make sure it is securely on the fill pipe; and for double-walled spill prevention equipment with interstitial monitoring, check for a leak in the interstitial area;

B. For release detection systems - check to make sure the release detection system is operating with no alarms or other unusual operating conditions present; and ensure records of release detection testing are reviewed monthly and are current;

2. Annually, owners and operators must—

A. For containment sumps required in 10 CSR 26-2.020 or 10 CSR 26-2.021, including tank top or submersible turbine pump, under-dispenser, and transition or intermediate sumps - visually check for any damage, leaks to the containment sump area, or releases to the environment; remove any liquid or debris; and for double-walled containment sumps, check for a leak in the interstitial area;

B. For hand held release detection equipment - check devices such as tank gauge sticks for operability and serviceability.

- (2) The first walkthrough inspections in section (1) are due—
 (A) Immediately upon installation for new UST systems installed after July 1, 2017; or
 (B) No later than January 1, 2020, for existing UST systems.

(3) Owners and operators may use the following codes to comply with this rule:

(A) Petroleum Equipment Institute RP 500-11, *Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment*. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Petroleum Equipment Institute, Box 2380, Tulsa, OK 74101-2380, (918) 494-9696, www.pei.org;

(B) Petroleum Equipment Institute RP 900-08, *Recommended Practices for Inspection and Maintenance of UST Systems*. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Petroleum Equipment Institute, Box 2380, Tulsa, OK 74101-2380, (918) 494-9696, www.pei.org.

(4) Owners and operators must maintain records (in accordance with 10 CSR 26-2.034) of operation and maintenance walkthrough inspections for one (1) year. The record must include a listing of each area checked, whether each area checked was acceptable or needed to have any action taken, and a description of any actions taken to correct an issue.

AUTHORITY: sections 319.105 and 319.107, RSMo 2000, and section 319.137, RSMo Supp. 2015. Original rule filed Aug. 15, 2016.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. The public entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate. The private entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

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Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance
Storage Tanks
Chapter 2—Underground Storage Tanks—Technical
Regulations

PROPOSED AMENDMENT

10 CSR 26-2.040 General Requirements for Release Detection for

All Underground Storage Tank Systems. The commission is proposing to amend sections (1) and (2) of this rule.

PURPOSE: There are two (2) primary purposes for this rulemaking. The first is to open UST rules in Title 10, Division 26 of the Code of State Regulations to make the necessary changes required by the U.S. Environmental Protection Agency (EPA). The 2005 Energy Policy Act required either financial responsibility for UST installers and manufacturers or secondary containment for all new systems. In addition, last October, EPA adopted changes to the federal UST regulations that need to be incorporated into state regulation. This rule-making will make the necessary changes to comply with these EPA grant requirements and to incorporate the changes made to the federal regulations.

The second reason is to incorporate state-specific changes. The proposed changes would better ensure that old tanks are still functional enough to remain in use. The changes would better prevent and detect leaks and incorporate new technologies. The department will also take this opportunity to clarify ambiguous or confusing language and update industry standard referenced in the regulations.

(1) Owners and operators of underground storage tank (UST) systems that are in use must use a method, or combination of methods, [or] of release detection that—

(B) Is installed, calibrated, operated, tested, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and. If manufacturer's test methods are not available, the annual operability test may be conducted in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory or a method approved by the department. Operability test reports must, at a minimum, include facility name and address, components tested, model and serial number (if legible), testing date, test method, technician name and affiliation, and a certification of results;

(C) For existing sites, the first test is due not later than January 1, 2020. Electronic and mechanical release detection equipment must be tested annually for proper operation, in accordance with subsection (B) of this section. A test of the proper operation must be performed at least annually and, at a minimum and as applicable to the facility, cover the following components and criteria:

1. Automatic tank gauge and other controllers: test alarm; verify system configuration; test battery backup;

2. Probes and sensors: inspect for residual buildup; ensure floats move freely; ensure shaft is not damaged; ensure cables are free of kinks, bends, and breaks; test alarm operability and communication with controller; and

3. Vacuum pumps and pressure gauges: ensure proper communication with sensors and controller;

[(D)](D) Meets the performance requirements for tanks in 10 CSR 26-2.043 or 10 CSR 26-2.046 for field constructed tanks, or for piping in 10 CSR 25-2.044 or 10 CSR 26-2.047 for bulk piping, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, all release detection methods must be capable of detecting the leak rate or quantity specified for [that tank] the method in 10 CSR 26-2.043, [or piping method in] 10 CSR 26-2.044, 10 CSR 26-2.046, or 10 CSR 26-2.047, as appropriate, with a probability of detection of ninety-five percent (95%) and a probability of false alarm of five percent (5%); and

[(D)](E) All release detection methods and equipment must be conducted and operated in accordance with the applicable National Work Group on Leak Detection Evaluations [(NWGLDE) certification] listing, unless otherwise approved by the department. To obtain copies of equipment [certifications] listings, contact the National Work Group [for] on Leak Detection Evaluations, www.nwglde.org.

(2) When a release detection method for tanks in 10 CSR 26-2.043 or 10 CSR 26-2.046 or for piping in 10 CSR 26-2.044 or 10 CSR 26-2.047 indicates a release may have occurred, owners and operators must notify the department in accordance with 10 CSR 26-2.050-10 CSR 26-2.053.

AUTHORITY: sections 319.105, 319.107, and 319.111, RSMo 2000, and section 319.137, RSMo Supp. [2010] 2013. This rule originally filed as 10 CSR 20-10.040. Original rule filed April 2, 1990, effective Sept. 28, 1990. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Moved and amended: Filed April 15, 2011, effective Dec. 30, 2011. Amended: Filed Aug. 15, 2016.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. The public entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

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Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance
Storage Tanks
Chapter 2—Underground Storage Tanks—Technical
Regulations

PROPOSED AMENDMENT

10 CSR 26-2.041 Requirements for Petroleum Underground Storage Tank Systems. The commission is proposing to amend sections (1) and (2) of this rule.

PURPOSE: There are two (2) primary purposes for this rulemaking. The first is to open UST rules in Title 10, Division 26 of the Code of State Regulations to make the necessary changes required by the U.S. Environmental Protection Agency (EPA). The 2005 Energy Policy Act required either financial responsibility for UST installers and manufacturers or secondary containment for all new systems. In addition, last October, EPA adopted changes to the federal UST regulations that need to be incorporated into state regulation. This rulemaking will make the necessary changes to comply with these EPA grant requirements and to incorporate the changes made to the federal regulations.

The second reason is to incorporate state-specific changes. The proposed changes would better ensure that old tanks are still functional enough to remain in use. The changes would better prevent and detect leaks and incorporate new technologies. The department will also take this opportunity to clarify ambiguous or confusing language and update industry standard referenced in the regulations.

(1) Owners and operators of petroleum underground storage tanks (UST) systems that are in use must provide release detection for tanks and piping as follows:

(A) Tanks. Tanks must be monitored at least every thirty (30) days for releases using one (1) of the methods listed in 10 CSR 26-2.043(1)(B)-(I), except that—

1. UST systems that meet new or upgraded standards in 10 CSR 26-2.020 or 10 CSR 26-2.021 and the monthly inventory control requirements in 10 CSR 26-2.043(1)(A) may use tank tightness testing (10 CSR 26-2.043(1)(D)) at least every five (5) years until December 22, 1998, or until ten (10) years after the tank is installed or upgraded under 10 CSR 26-2.021(3), whichever is later;

2. Tanks with a capacity of [five hundred fifty (550)] two thousand (2,000) gallons or less may use manual tank gauging (10 CSR 26-2.043(1)(C)); [and]

3. Field-constructed tanks greater than fifty thousand (50,000) gallons may use the alternative release detection requirements in 10 CSR 26-2.046;

4. Groundwater monitoring (10 CSR 26-2.043 subsection (1)(G)) will no longer be valid to monitor for releases after July 1, 2020;

5. Vapor monitoring (10 CSR 26-2.043 subsection (1)(F)) will no longer be valid to monitor for releases after July 1, 2020, if used with an added tracer chemical and listed by the National Work Group on Leak Detection Evaluations as a tank tightness test; and

6. Tanks installed after July 1, 2017, must be monitored for leaks at least every thirty (30) days in accordance with 10 CSR 26-2.043(H);

(B) Piping. Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one (1) of the following requirements:

1. Pressurized piping. Underground piping that conveys regulated substances under pressure must—

A. Be equipped with an automatic line leak detector in 10 CSR 26-2.044(1)(A); [and]

B. Have an annual line tightness test conducted in accordance with 10 CSR 26-2.044(1)(B) or have monthly monitoring conducted in accordance with 10 CSR 26-2.044(1)(C); and

C. New or replaced piping installed after July 1, 2017, must be monitored for releases at least every thirty (30) days in accordance with 10 CSR 26-2.043 subsection (1)(H);

2. Suction piping. Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every three (3) years and in accordance with 10 CSR 26-2.044(1)(B) or use a monthly monitoring method conducted in accordance with 10 CSR 26-2.044(1)(C). New or replaced piping installed after July 1, 2017, must be monitored for releases at least every thirty (30) days in accordance with 10 CSR 26-2.043 subsection (1)(H). No release detection is required for suction piping that is designed and constructed to meet the following standards:

A. The below-grade piping operates at less than atmospheric pressure;

B. The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

C. Only one (1) check valve is included in each suction line;

D. The check valve is located directly below and as close as practical to the suction pump; and

E. A method is provided that allows compliance with subparagraphs (1)(B)2.A.-D. of this rule to be readily determined (for

example, the check valve can be visually inspected); and

3. Gravity piping and remote fill piping are exempt from the piping line leak detection requirements in this section./.; and

4. **Underground bulk piping associated with airport hydrant fuel distribution systems and field-constructed tanks must meet one (1) of the following release detection requirements:**

A. **The requirements in subsection (B) of this section; or**

B. **The alternative release detection requirements in 10 CSR 26-2.047;**

C. **Underground bulk piping installed after July 1, 2017, must meet the requirements in paragraph 1. or 2. of this subsection.**

(2) High-throughput Facilities. In addition to the requirements outlined in section (1) of this rule, any owner of a tank or a multi-tank connected or manifolded system that dispenses more than eight hundred thousand (800,000) gallons of any regulated substance in one (1) calendar month must use at least one (1) of the following tank system release detection methods:

(B) Vapor monitoring, including introduced chemical marker monitoring, [approved] listed by the National Work Group [for] on Leak Detection Evaluations (NWGLDE) for the substance stored at least once every fifteen (15) days. To obtain copies of equipment [certifications] listings, contact the National Work Group [for] on Leak Detection Evaluations, www.nwglde.org; or

(C) Continuous in-tank release detection, which must include continual reconciliation of tank system inventory. Standard statistical inventory control is not acceptable. The method used must meet criteria established by the National Work Group [for] on Leak Detection Evaluations (NWGLDE) for continuous in-tank leak detection methods. To obtain copies of equipment [certifications] listings, contact the National Work Group [for] on Leak Detection Evaluations, www.nwglde.org; or

AUTHORITY: sections 319.105 and 319.107, RSMo 2000, and section 319.137, RSMo Supp. [2010] 2013. This rule originally filed as 10 CSR 20-10.041. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011, effective Dec. 30, 2011. Amended: Filed Aug. 15, 2016.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. The public entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rule-makings.

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**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance
Storage Tanks
Chapter 2—Underground Storage Tanks—Technical
Regulations**

PROPOSED AMENDMENT

10 CSR 26-2.042 Requirements for Hazardous Substance Underground Storage Tank Systems. The commission is proposing to amend section (1) of this rule and adding a new section (3).

PURPOSE: There are two (2) primary purposes for this rulemaking. The first is to open UST rules in Title 10, Division 26 of the Code of State Regulations to make the necessary changes required by the U.S. Environmental Protection Agency (EPA). The 2005 Energy Policy Act required either financial responsibility for UST installers and manufacturers or secondary containment for all new systems. In addition, last October, EPA adopted changes to the federal UST regulations that need to be incorporated into state regulation. This rule-making will make the necessary changes to comply with these EPA grant requirements and to incorporate the changes made to the federal regulations.

The second reason is to incorporate state-specific changes. The proposed changes would better ensure that old tanks are still functional enough to remain in use. The changes would better prevent and detect leaks and incorporate new technologies. The department will also take this opportunity to clarify ambiguous or confusing language and update industry standard referenced in the regulations.

(1) Owners and operators of in-use hazardous substance underground storage tank (UST) systems must use a release detection method that meets the requirements of 10 CSR 26-2.041 and **10 CSR 26-2.043 subsection (1)(H), except for the electronic monitoring requirement in 10 CSR 26-2.043 paragraph (1)(H)2. with approval from the department.**

(3) **All new or replaced hazardous substance UST systems installed after July 1, 2017, must also comply with the containment sump testing requirements in 10 CSR 26-2.035.**

AUTHORITY: sections 319.105 and 319.107, RSMo 2000, and section 319.137, RSMo Supp. [2010] 2013. This rule originally filed as 10 CSR 20-10.042. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011, effective Dec. 30, 2011. Amended: Filed Aug. 15, 2016.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. The public entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rule-makings.

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Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance
Storage Tanks
Chapter 2—Underground Storage Tanks—Technical
Regulations

PROPOSED AMENDMENT

10 CSR 26-2.043 Methods of Release Detection for Tanks. The commission is proposing to amend section (1) of this rule and add a new section (2).

PURPOSE: There are two (2) primary purposes for this rulemaking. The first is to open UST rules in Title 10, Division 26 of the Code of State Regulations to make the necessary changes required by the U.S. Environmental Protection Agency (EPA). The 2005 Energy Policy Act required either financial responsibility for UST installers and manufacturers or secondary containment for all new systems. In addition, last October, EPA adopted changes to the federal UST regulations that need to be incorporated into state regulation. This rulemaking will make the necessary changes to comply with these EPA grant requirements and to incorporate the changes made to the federal regulations.

The second reason is to incorporate state-specific changes. The proposed changes would better ensure that old tanks are still functional enough to remain in use. The changes would better prevent and detect leaks, establish clearer and more detailed leak detection system requirements, and incorporate new technologies. The department will also take this opportunity to clarify ambiguous or confusing language and update industry standard referenced in the regulations.

(1) Methods of release detection for underground storage tanks (USTs) used to meet the requirements in 10 CSR 26-2.041 must be conducted as follows:

(B) Statistical Inventory Reconciliation (SIR), which is a statistical inventory analysis method that tests for the loss of a regulated substance. SIR must meet the following requirements:

1. Report a quantitative result with a calculated leak rate;

[1.]2. Be able to detect a two-tenths (0.2) gallon-per-hour leak rate from any portion of the tank system that routinely contains a regulated substance;

[2.]3. Must be conducted for each independent tank system;

[3.]4. Be done in conjunction with inventory control that meets the requirements in 10 CSR 26-2.043(1)(A); *and*

5. Use a threshold that does not exceed one-half (1/2) the minimum detectible leak rate;

[4.]6. Be conducted in accordance with the National Work Group on Leak Detection Evaluations *[certification]* listing and the manufacturer's requirements. To obtain copies of equipment *[certifications]* listings, contact the National Work Group *[for]* on Leak Detection Evaluations, www.nwglde.org; **and**

[5.] Owners and operators must maintain all supporting data, including regulated substance and water stick read-

ings, for at least twelve (12) months.]

[6.]7. The SIR analysis report must *[be completed and sent to the owner or operator within fifteen (15) days of the end of each calendar month;]* include the daily data, inventory measurements of the regulated substance and water, delivery data, and analysis or reporting date;

(C) Manual Tank Gauging. Manual tank gauging must meet the following requirements:

1. Tank liquid level measurements are taken at the beginning and ending of a period of at least thirty-six (36) hours during which no liquid is added to or removed from the tank;

2. Level measurements are based on an average of two (2) consecutive stick readings at both the beginning and ending of the period;

3. The equipment used is capable of measuring the level of regulated substance over the full range of the tank's height to the nearest one-eighth inch (1/8");

4. A leak is suspected and subject to the requirements of 10 CSR 26-2.050–10 CSR 26-2.053 if the variation between beginning and ending measurements exceeds the following weekly or monthly standards:

A. Tanks of five hundred fifty (550)-gallon capacity or less are allowed a weekly standard of ten (10) gallons per reading and a monthly average of five (5) gallons per reading, **with a minimum test duration of thirty-six (36) hours;**

B. Five hundred fifty-one to one thousand (551–1,000)-gallon capacity tanks are allowed a difference of thirteen (13) gallons per week and a monthly average of seven (7) gallons, **with a minimum test duration of thirty-six (36) hours, and when combined with a tank tightness test in accordance with subsection (D) of this section;**

C. One thousand one to two thousand (1,001–2,000)-gallon capacity tanks are allowed a difference of twenty-six (26) gallons per week and a monthly average of thirteen (13) gallons, **with a minimum test duration of thirty-six (36) hours, and when combined with a tank tightness test in accordance with subsection (D) of this section;**

D. Five hundred fifty-one to one thousand (551–1,000)-gallon capacity tanks with *[dimensions]* a diameter no greater than sixty-four inches (64") *[by seventy-three (64"x73")]* are allowed a difference of nine (9) gallons per week and monthly average of four (4) gallons, provided that a period of at least forty-four (44) hours during which no liquid is added to or removed from the tank is allowed to pass between tank liquid level measurements, **without requiring an additional tank tightness test;** and

E. *[One thousand (1,000)-gallon capacity tanks with dimensions of]* Five hundred fifty-one to one thousand (551–1,000)-gallon capacity tanks with a diameter no greater than forty-eight inches *[by one hundred twenty-eight inches (48"x28")]* (48") are allowed a difference of twelve (12) gallons per week and a monthly average of six (6) gallons, provided that a period of at least fifty-eight (58) hours during which no liquid is added to or removed from the tank is allowed to pass between tank liquid level measurements, **without requiring an additional tank tightness test;** and

[5.] Use of manual tank gauging must comply with the following size restrictions:

A. Tanks of five hundred fifty (550) gallons or less nominal capacity may use this as the sole method of release detection;

B. Tanks of five hundred fifty-one to one thousand (551–1,000)-gallon capacity with dimensions no greater than sixty-four by seventy-three inches (64"x73") and tanks of one thousand (1,000)-gallon capacity with dimensions of forty-eight inches by one hundred twenty-eight inches (48"x128") may use this as the sole method of release detection;

C. Tanks of five hundred fifty-one to two thousand

(551-2,000) gallons may use the method in place of inventory control in 10 CSR 26-2.043(1)(A); and]

[D./F. Tanks of greater than two thousand (2,000) gallons nominal capacity may not use this method for release detection;

(E) Automatic Tank Gauging. Equipment for automatic tank gauging that tests for the loss of regulated substance and conducts inventory control must meet the following requirements:

1. The automatic regulated substance level monitor test can detect a two-tenths (0.2)-gallon-per-hour leak rate from any portion of the tank that routinely contains a regulated substance; *and*

2. The test must be performed with the system operating in one of the following modes:

A. In-tank static testing conducted at least once every thirty (30) days; or

B. Continuous in-tank leak detection operating on an uninterrupted basis or operating within a process that allows the system to gather incremental measurements to determine the leak status of the tank at least once every thirty (30) days; and

[2./3. Inventory control (or equivalent test) meeting the requirements in 10 CSR 26-2.043(1)(A) is conducted;

(F) Vapor Monitoring. Testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:

1. The materials used as backfill are sufficiently porous and permeable (for example, gravel, sand, or crushed rock) to readily allow diffusion of vapors from releases into the excavation area;

2. The stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile (for example, gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;

3. The measurement of vapors by the monitoring device is not rendered inoperative by the groundwater, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than thirty (30) days;

4. The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;

5. The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component(s) of that substance, or a tracer compound placed in the tank system;

6. In the UST excavation zone, the site is assessed to ensure compliance with the requirements in paragraphs (1)(F)1.-4. of this rule and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains a regulated substance; *and*

7. Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering; **and**

8. After July 1, 2020, use a tracer chemical and the method is listed by the National Work Group on Leak Detection Evaluations as a tank tightness test;

(G) Groundwater Monitoring. Testing or monitoring for liquids on the groundwater may only be used as a release detection method until July 1, 2020, and must meet the following requirements:

1. The regulated substance stored is immiscible in water and has a specific gravity of less than one (1);

2. The groundwater is within twenty feet (20') from the ground surface and the hydraulic conductivity of the soil(s) between the UST system and the monitoring wells or devices is at least one hundredth centimeter per second (0.01 cm/sec) (for example, the soil should consist of gravels, coarse to medium sands, coarse silts, or other permeable materials);

3. The slotted portion of the monitoring well casing must be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low groundwater conditions;

4. Monitoring wells shall be sealed from the ground surface to the top of the filter pack;

5. Monitoring wells or devices shall intercept the excavation

zone or are as close to it as is technically feasible;

6. The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth inch (1/8") of free product on top of the groundwater in the monitoring wells;

7. The site is assessed within and immediately below the UST system excavation zone to ensure compliance with the requirements in paragraphs (1)(G)1.-5. of this rule. The site assessment also establishes the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains a regulated substance; and

8. Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering;

(H) Interstitial Monitoring. Interstitial monitoring *[between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed, and]* must monitor between the walls of a double-walled tank or, for piping, is designed to detect a release from the primary piping, including all fittings, and contain it until it can be detected. The entire piping secondary containment must be leak tight. Interstitial monitoring must be installed to detect a leak from any portion of the tank that routinely contains a regulated substance and also meets *[one (1) of]* the following requirements:

[1. For double-walled UST systems, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains a regulated substance;

2. For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier.

A. The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (less than one millionth centimeter per second (10^{-6} cm/sec) for the regulated substance stored) to direct a release to the monitoring point and permits its detection.

B. The barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected.

C. For cathodically protected tanks the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system.]

[D.]1. The groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than thirty (30) days;

[E. The site is assessed to ensure that the secondary barrier is always above the groundwater and not in a twenty-five (25)-year flood plain, unless the barrier and monitoring designs are for use under these conditions.

F. Monitoring wells are clearly marked and secured to avoid unauthorized access tampering;

3. For tanks with an internally fitted liner, an automated device can detect a release between the inner wall of the tank and the liner is compatible with the substance stored; and

4. The provisions outlined in the Steel Tank Institute's Standard for Dual Wall Underground Storage Tanks may be used as guidance for aspects of the design and construction of underground steel double-walled tanks; and]

2. For new UST systems installed after July 1, 2017, interstitial monitoring must be conducted electronically by a system with a report-generating capability; and

3. For UST systems using continuous vacuum, pressure, or liquid-filled methods of interstitial monitoring, the method must be capable of detecting a breach in both the inner and outer walls of the tank and/or piping; and

(2) Owners and operators of field-constructed or airport hydrant fuel distribution system tanks may not use vapor monitoring or groundwater monitoring, described in subsections (F) and (G) of this rule as their sole method of detection, but may use them in conjunction with 10 CSR 26-2.046.

AUTHORITY: sections 319.105 and 319.107, RSMo 2000, and section 319.137, RSMo Supp. [2010] 2013. This rule originally filed as 10 CSR 20-10.043. Original rule filed April 2, 1990, effective Sept. 28, 1990. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Moved and amended: Filed April 15, 2011, effective Dec. 30, 2011. Amended: Filed Aug. 15, 2016.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. The public entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate. The private entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: *The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on October 20, 2016, at the Elm Street Conference Center, 1730 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required. However, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.*

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on October 27, 2016. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on October 27, 2016. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1730 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance
Storage Tanks
Chapter 2—Underground Storage Tanks—Technical
Regulations**

PROPOSED AMENDMENT

10 CSR 26-2.044 Methods of Release Detection for Piping. The commission is proposing to amend section (1) of this rule.

PURPOSE: There are two (2) primary purposes for this rulemaking. The first is to open UST rules in Title 10, Division 26 of the Code of State Regulations to make the necessary changes required by the U.S. Environmental Protection Agency (EPA). The 2005 Energy Policy Act required either financial responsibility for UST installers and manufacturers or secondary containment for all new systems. In addition, last October, EPA adopted changes to the federal UST regulations that need to be incorporated into state regulation. This rulemaking will make the necessary changes to comply with these EPA grant requirements and to incorporate the changes made to the federal regulations.

The second reason is to incorporate state-specific changes. The

proposed changes would better ensure that old tanks are still functional enough to remain in use. The changes would better prevent and detect leaks, establish clearer and more detailed release detection system requirements, and incorporate new technologies. The department will also take this opportunity to clarify ambiguous or confusing language and update industry standard referenced in the regulations.

(1) Each method of release detection for piping used to meet the requirements of release detection for underground storage tanks (USTs) in 10 CSR 26-2.041 must be conducted in the following manner:

(A) Automatic Line Leak Detectors. Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of three (3) gallons per hour at ten (10) pounds per square-inch line pressure within one (1) hour and are [certified] listed by the National Work Group on Leak Detection Evaluations. To obtain copies of equipment [certifications] listings, contact the National Work Group [for] on Leak Detection Evaluations, www.nwglde.org. A test of the operation of the leak detector must be conducted at least annually. The annual test must be conducted in accordance with the manufacturer's approved testing procedures[.] and simulate a leak of at least three (3) gallons per hour at ten (10) pounds per square inch pressure, or equivalent, in the system under normal operating conditions.

1. Line leak detectors must monitor all pressurized piping, including pressurized piping beyond the first or master dispenser but not including other piping above the shear valve inside the dispenser or dispenser hoses to the nozzle[.];

[2. Line leak detector operability test reports must include facility name and address, line leak detector manufacturer, model and serial number, if legible, testing date, test method, technician name and affiliation, and a certification of results;]

(C) Applicable Tank Methods. Any of the methods in 10 CSR 26-2.043(1)(B) and (F)-(I) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances[; and] except—

1. Owners and operators of piping greater than fifty thousand (50,000) gallons associated with field-constructed tanks or airport hydrant fuel distribution system tanks may comply with 10 CSR 26-2.074 in lieu of the methods of piping leak detection in this rule;

2. Groundwater monitoring (10 CSR 26-2.043 subsection (1)(G)) can no longer be used after July 1, 2020; and

3. Vapor monitoring (10 CSR 26-2.043 subsection (1)(F)) can no longer be used after July 1, 2020, unless with an added tracer chemical and listed by the National Work Group on Leak Detection Evaluations as a tightness test; and

AUTHORITY: sections 319.105 and 319.107, RSMo 2000, and section 319.137, RSMo Supp. [2010] 2013. This rule originally filed as 10 CSR 20-10.044. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011, effective Dec. 30, 2011. Amended: Filed Aug. 15, 2016.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. The public entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate. The private entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: *The Missouri Hazardous Waste Management Commission*

will hold a public hearing on this rule action and others beginning at 10:00 a.m. on October 20, 2016, at the Elm Street Conference Center, 1730 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required. However, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on October 27, 2016. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on October 27, 2016. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1730 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance
Storage Tanks
Chapter 2—Underground Storage Tanks—Technical
Regulations

PROPOSED AMENDMENT

[10 CSR 26-2.045] **10 CSR 26-2.048 Release Detection Record Keeping.** The commission is proposing to move the rule and amend section (1) of this rule.

PURPOSE: There are two (2) primary purposes for this rulemaking. The first is to open UST rules in Title 10, Division 26 of the *Code of State Regulations* to make the necessary changes required by the U.S. Environmental Protection Agency (EPA). The 2005 Energy Policy Act required either financial responsibility for UST installers and manufacturers or secondary containment for all new systems. In addition, last October, EPA adopted changes to the federal UST regulations that need to be incorporated into state regulation. This rulemaking will make the necessary changes to comply with these EPA grant requirements and to incorporate the changes made to the federal regulations.

The second reason is to incorporate state-specific changes. The proposed changes would better ensure that old tanks are still functional enough to remain in use. The changes would better prevent and detect leaks, incorporate new technologies and update the release detection recordkeeping requirements. The department will also take this opportunity to clarify ambiguous or confusing language and update industry standard referenced in the regulations.

(1) All underground storage tank (UST) system owners and operators must maintain records in 10 CSR 26-2.034 demonstrating compliance with applicable release detection requirements in 10 CSR 26-2.040–10 CSR 26-2.04/5/8. These records must include the following:

(A) All written performance claims of any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be [maintained] retained for five (5) years from the date of equipment installation or for another reasonable period of time determined by the department [from the date of installation];

(B) The results of any sampling, testing, or monitoring must be [maintained] retained for at least one (1) year, or for another reasonable period of time determined by the department, except that—

1. [t]The results of tank tightness testing conducted in accordance with 10 CSR 26-2.043(1)(D) must be retained until the next test is conducted; and

2. The results of annual operability tests of release detection

equipment must be retained until the next test is performed; and

(C) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be [maintained] retained for at least one (1) year after the servicing work is completed. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for five (5) years from the date of installation.

AUTHORITY: sections 319.105 and 319.107, RSMo 2000, and section 319.137, RSMo Supp. [2010] 2013. This rule originally filed as 10 CSR 20-10.045. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011, effective Dec. 30, 2011. Amended: Filed Aug. 15, 2016.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. The public entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate. The private entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on October 20, 2016, at the Elm Street Conference Center, 1730 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required. However, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on October 27, 2016. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on October 27, 2016. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1730 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance
Storage Tanks
Chapter 2—Underground Storage Tanks—Technical
Regulations

PROPOSED RULE

10 CSR 26-2.046 Alternative Methods of Release Detection for Field-Constructed Tanks

PURPOSE: This rule contains the new options for release detection for the previously deferred field-constructed tanks and airport hydrant fuel distribution systems.

(1) Owners and operators of field-constructed tanks with a capacity greater than fifty thousand (50,000) gallons may use one (1) or a combination of the following alternative methods of release detection:

(A) Conduct an annual tank tightness test that can detect a one-half (0.5) gallon per hour leak rate;

(B) Use an automatic tank gauging system to perform release

detection at least every thirty (30) days that can detect a leak rate less than or equal to one (1) gallon per hour. This method must be combined with a tank tightness test that can detect a two-tenths (0.2) gallon per hour leak rate performed at least every three (3) years;

(C) Use an automatic tank gauging system to perform release detection at least every thirty (30) days that can detect a leak rate less than or equal to two (2) gallons per hour. This method must be combined with a bulk tank tightness test that can detect a two-tenths (0.2) gallon per hour leak rate performed at least every two (2) years;

(D) Perform vapor monitoring, with an added tracer chemical, conducted in accordance with 10 CSR 26-2.043 subsection (1)(F), capable of detecting a one-tenth (0.1) gallon per hour leak rate at least every two (2) years;

(E) Perform inventory control, conducted in accordance with Department of Defense Directive 4140.25; *ATA Airport Fuel Facility Operations and Maintenance Guidance Manual*, at least every thirty (30) days that can detect a leak equal to or less than one-half percent (0.5%) of flow-through. When using this method, the following must also be met:

1. Perform a tank tightness test that can detect a one-half (0.5) gallon per hour leak rate at least every two (2) years; or

2. Perform vapor monitoring or groundwater monitoring in accordance with 10 CSR 26-2.043 subsection (1)(F) or (G), respectively, at least every thirty (30) days; and

(F) Another method approved by the department if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in subsections (A) through (C) of this section. In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability of detection. If the method is approved, the owner and operator must comply with any conditions imposed by the department on its use.

AUTHORITY: sections 319.105 and 319.107, RSMo 2000, and section 319.137, RSMo Supp. 2015. Original rule filed Aug. 15, 2016.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. The public entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate. The private entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required. However, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on June 23, 2011. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on June 23, 2011. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance
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Chapter 2—Underground Storage Tanks—Technical
Regulations**

PROPOSED RULE

10 CSR 26-2.047 Alternative Methods of Release Detection for Bulk Underground Piping

PURPOSE: This rule contains the new options for release detection for the previously deferred field-constructed tanks and airport hydrant fuel distribution piping systems.

(1) Owners and operators of bulk underground piping associated with any airport hydrant fuel distribution systems and field-constructed tanks greater than fifty thousand (> 50,000) gallons may use one (1) or a combination of the following alternative methods of release detection:

(A) Perform a biannual or annual bulk line tightness test at or above operating pressure in accordance with the table below. Bulk piping segments greater than or equal to one hundred thousand (≥ 100,000) gallons not capable of meeting the maximum three (3.0) gallons per hour leak rate for the biannual test may be tested at a leak rate up to six (6.0) gallons per hour:

| Maximum Detectable Leak Rate Per Test Section Volume | | |
|--|---|---|
| Test Section Volume (Gallons) | Biannual Test Maximum Detectable Leak Rate (Gallons Per Hour) | Annual Test Maximum Detectable Leak Rate (Gallons Per Hour) |
| < 50,000 | 1.0 | 0.5 |
| ≥ 50,000 to < 75,000 | 1.5 | 0.75 |
| ≥ 75,000 to < 100,000 | 2.0 | 1.0 |
| ≥ 100,000 | 3.0 | 1.5 |

(B) Perform vapor monitoring, with an added tracer chemical, conducted in accordance with 10 CSR 26-2.043(F), capable of detecting a one-tenth (0.1) gallon per hour leak rate at least every two (2) years;

(C) Perform inventory control, conducted in accordance with Department of Defense Directive 4140.25; *ATA Airport Fuel Facility Operations and Maintenance Guidance Manual*, at least every thirty (30) days that can detect a leak equal to or less than one-half percent (0.5%) of flow-through. When using this method, the following must also be met:

1. Perform a line tightness test in accordance with the biannual test threshold in subsection (A) of this section at least every two (2) years; or

2. Perform vapor monitoring or groundwater monitoring in accordance with 10 CSR 26-2.043 subsection (1)(F) or (G), respectively, at least every thirty (30) days;

(D) Another method approved by the department if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in subsections (A) through (C). In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability of detection. If the method is approved, the owner and operator must comply with any conditions imposed by the department on its use.

AUTHORITY: sections 319.105 and 319.107, RSMo 2000, and section 319.137, RSMo Supp. 2015. Original rule filed Aug. 15, 2016.

PUBLIC COST: This proposed rule will not cost state agencies or

political subdivisions more than five hundred dollars (\$500) in the aggregate. The public entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate. The private entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on June 16, 2011, at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required. However, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on June 23, 2011. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance
Storage Tanks
Chapter 2—Underground Storage Tanks—Technical
Regulations**

PROPOSED AMENDMENT

10 CSR 26-2.050 Reporting of Suspected Releases. The commission is proposing to amend section (1) of this rule.

PURPOSE: There are two (2) primary purposes for this rulemaking. The first is to open UST rules in Title 10, Division 26 of the *Code of State Regulations* to make the necessary changes required by the U.S. Environmental Protection Agency (EPA). The 2005 Energy Policy Act required either financial responsibility for UST installers and manufacturers or secondary containment for all new systems. In addition, last October, EPA adopted changes to the federal UST regulations that need to be incorporated into state regulation. This rulemaking will make the necessary changes to comply with these EPA grant requirements and to incorporate the changes made to the federal regulations.

The second reason is to incorporate state-specific changes. The proposed changes would better ensure that old tanks are still functional enough to remain in use. The changes would better prevent and detect leaks and incorporate new technologies. The department will also take this opportunity to clarify ambiguous or confusing language and update industry standard referenced in the regulations.

(1) Owners and operators of underground storage tank (UST) systems must report to the department within twenty-four (24) hours and follow the procedures for release investigation and confirmation in 10 CSR 26-2.052 upon discovery of one (1) or more of the following conditions:

(B) Unusual operating conditions observed by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of a regulated substance from the UST system, an unexplained presence of water in the tank, **liquid in the interstitial space of secondarily contained systems**, or visible leaks from aboveground piping or ancillary equipment connected to a UST), unless system equipment is found to be defective but not [leaking]

releasing regulated substance from the UST system and is immediately repaired or replaced; or

(C) Monitoring results, **including investigations of leak alarms**, from a release detection method required under 10 CSR 26-2.041 [and] through 10 CSR 26-2.042/27 that indicate a release may have occurred unless—

1. The monitoring device is found to be defective and is immediately repaired, recalibrated, or replaced and additional monitoring does not confirm the initial result; or

2. **The leak alarm was investigated and determined to have been caused by an event other than a release (for example, a power surge or delivery to the tank during release detection testing); or**

[2.]3. In the case of inventory control, a second month of data does not confirm the initial result.

AUTHORITY: section 319.109, RSMo Supp. [2010] 2013. This rule originally filed as 10 CSR 20-10.050. Original rule filed April 2, 1990, effective Sept. 28, 1990. Moved and amended: Filed April 15, 2011, effective Dec. 30, 2011. Amended: Filed Aug. 15, 2016.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. The public entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate. The private entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rulemakings.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on October 20, 2016, at the Elm Street Conference Center, 1730 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required. However, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on October 27, 2016. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on October 27, 2016. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1730 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 26—Petroleum and Hazardous Substance
Storage Tanks
Chapter 2—Underground Storage Tanks—Technical
Regulations**

PROPOSED AMENDMENT

10 CSR 26-2.052 Release Investigation and Confirmation Steps. The commission is proposing to amend section (1) of this rule.

PURPOSE: There are two (2) primary purposes for this rulemaking. The first is to open UST rules in Title 10, Division 26 of the *Code of State Regulations* to make the necessary changes required by the U.S. Environmental Protection Agency (EPA). The 2005 Energy

Policy Act required either financial responsibility for UST installers and manufacturers or secondary containment for all new systems. In addition, last October, EPA adopted changes to the federal UST regulations that need to be incorporated into state regulation. This rule-making will make the necessary changes to comply with these EPA grant requirements and to incorporate the changes made to the federal regulations.

The second reason is to incorporate state-specific changes. The proposed changes would better ensure that old tanks are still functional enough to remain in use. The changes would better prevent and detect leaks, outline the requirements for responding to suspected releases, and incorporate new technologies. The department will also take this opportunity to clarify ambiguous or confusing language and update industry standard referenced in the regulations.

(1) Unless corrective action is initiated in accordance with 10 CSR 26-2.070–10 CSR 26-2.083, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under 10 CSR 26-2.050 within seven (7) days or another reasonable time period specified by the department using either the following steps or another procedure approved by the department:

(A) System Test. Owners and operators must conduct tests *[(tightness testing of tanks in 10 CSR 26-2.043(1)(D) and piping in 10 CSR 26-2.044(1)(B))]* appropriate for the suspected release, using tightness tests listed by the National Work Group on Leak Detection Evaluations and/or approved by the department, or for containment sumps, a test method included in 10 CSR 26-2.035, to determine whether a leak exists in that portion of the tank system that routinely contains a regulated substance *[or the attached delivery piping]* or *[both]* a breach of the interstitial space has occurred. To obtain copies of equipment listings, contact the National Work Group on Leak Detection Evaluations, www.nwglde.org.

1. If the system test confirms a leak into the interstice or a release, *[O]*owners and operators must repair, replace, *[or]* upgrade, or close the underground storage tank (UST) system, *[and]*. Owners and operators must begin a site check in accordance with subsection (1)(B) and corrective action in accordance with 10 CSR 26-2.070–10 CSR 26-2.083 if the test results for the system, tank, or delivery piping indicate that a *[leak] release [exists] has occurred*.

2. Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a *[leak] release* exists and if environmental contamination is not the basis for suspecting a release.

3. Owners and operators must conduct a site check as described in subsection (1)(B) of this rule if the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release; or

AUTHORITY: sections 319.105 and 319.107, RSMo 2000, and sections 319.109 and 319.137, RSMo Supp. [2010] 2013. This rule originally filed as 10 CSR 20-10.052. Original rule filed April 2, 1990, effective Sept. 28, 1990. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Moved and amended: Filed April 15, 2011, effective Dec. 30, 2011. Amended: Filed Aug. 15, 2016.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. The public entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rule-makings.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate. The private entity fiscal cost impacts for compliance with the federal standards are accounted for in the federal rule-makings.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 10:00 a.m. on October 20, 2016, at the Elm Street Conference Center, 1730 East Elm Street, Jefferson City, Missouri. Any interested person will have the opportunity to testify. Advance notice is not required. However, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Hazardous Waste Management Commission at (573) 751-2747.

Any person may submit written comments on this rule action. Interested persons, whether or not heard, may submit a written or email statement of their views until midnight on October 27, 2016. Written comments shall be sent to the director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on October 27, 2016. Email comments shall be sent to heather.peters@dnr.mo.gov. Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1730 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 10—Nursing Home Program**

PROPOSED AMENDMENT

13 CSR 70-10.030 Prospective Reimbursement Plan for Nonstate-Operated Facilities for ICF//MR//IID Services. The division is amending sections (1)–(7) and adding new subparagraphs (4)(A)1.O. and (4)(A)1.P.

PURPOSE: This amendment changes the terminology of the services addressed in this regulation from “nonstate-operated intermediate care facility/mentally retarded (ICF/MR) services” to “nonstate-operated intermediate care facility for individuals with intellectual disabilities (ICF//IID) services” and provides for trend factors to be applied to adjust per diem rates for nonstate-operated ICF//IID facilities participating in the MO HealthNet program.

PURPOSE: This rule establishes a payment plan for nonstate-operated intermediate care facility/mentally retarded] for individuals with intellectual disabilities services. The plan describes principles to be followed by Title XIX intermediate care facility/mentally retarded] for individuals with intellectual disabilities providers in making financial reports and presents the necessary procedures for setting rates, making adjustments, and auditing the cost reports.

(1) Objectives. This rule establishes a payment plan for nonstate-operated intermediate care facility/mentally retarded] for individuals with intellectual disabilities (ICF//MR//IID) services.

(2) General Principles.

(A) The MO HealthNet program shall reimburse qualified providers of ICF//MR//IID services based solely on the individual MO HealthNet participant’s days of care (within benefit limitations) multiplied by the facility’s Title XIX per diem rate less any payments made by participants.

(B) Effective November 1, 1986, the Title XIX per diem rate for all ICF//MR//IID facilities participating on or after October 31, 1986, shall be the lower of—

1. The average private pay charge;
2. The Medicare per diem rate, if applicable;

3. The rate paid to a facility on October 31, 1986, as adjusted by updating its base year to its 1985 fiscal year. Facilities which do not have a full twelve- (12-) month 1985 fiscal year shall not have their base years updated to their 1985 fiscal years. Changes in ownership, management, control, operation, leasehold interests by whatever form

for any facility previously certified for participation in the MO HealthNet program at any time that results in increased capital costs for the successor owner, management, or leaseholder shall not be recognized for purposes of reimbursement; and

4. However, any provider who does not have a rate on October 31, 1986, and whose facility meets the definition in subsection (3)(J) of this rule, will be exempt from paragraph (2)(B)3., and the rate shall be determined in accordance with applicable provisions of this rule.

(3) Definitions.

(H) ICF//MR/IID. Nonstate-operated facilities certified to provide intermediate care for *[the mentally retarded]* individuals with intellectual disabilities under the Title XIX program.

(L) Providers. A provider under the Prospective Reimbursement Plan is a nonstate-operated ICF//MR/IID facility with a valid participation agreement, in effect on or after October 31, 1986, with the Missouri Department of Social Services for the purpose of providing long-term care (LTC) services to Title XIX-eligible participants. Facilities certified to provide intermediate care services to *[the mentally retarded]* individuals with intellectual disabilities under the Title XIX program may be offered a MO HealthNet participation agreement on or after January 1, 1990, only if 1) the facility has no more than fifteen (15) beds for *[mentally retarded residents]* individuals with intellectual disabilities, and 2) there is no other licensed residential living facility for *[mentally retarded]* individuals with intellectual disabilities within a radius of one-half (1/2) mile of the facility seeking participation in the MO HealthNet program.

(4) Prospective Reimbursement Rate Computation.

(A) Except in accordance with other provisions of this rule, the provisions of this section shall apply to all providers of ICF//MR/IID services certified to participate in Missouri's MO HealthNet program.

1. ICF//MR/IID facilities.

A. Except in accordance with other provisions of this rule, the MO HealthNet program shall reimburse providers of these LTC services based on the individual MO HealthNet-participant days of care multiplied by the Title XIX prospective per diem rate less any payments collected from participants. The Title XIX prospective per diem reimbursement rate for the remainder of state Fiscal Year 1987 shall be the facility's per diem reimbursement payment rate in effect on October 31, 1986, as adjusted by updating the facility's allowable base year to its 1985 fiscal year. Each facility's per diem costs as reported on its Fiscal Year 1985 Title XIX cost report will be determined in accordance with the principles set forth in this rule. If a facility has not filed a 1985 fiscal year cost report, the most current cost report on file with the department will be used to set its per diem rate. Facilities with less than a full twelve- (12-) month 1985 fiscal year will not have their base year rates updated.

B. For state FY-88 and dates of service beginning July 1, 1987, the negotiated trend factor shall be equal to two percent (2%) to be applied in the following manner: Two percent (2%) of the average per diem rate paid to both state- and nonstate-operated ICF//MR/IID facilities on June 1, 1987, shall be added to each facility's rate.

C. For state FY-89 and dates of service beginning January 1, 1989, the negotiated trend factor shall be equal to one percent (1%) to be applied in the following manner: One percent (1%) of the average per diem rate paid to both state- and nonstate-operated ICF//MR/IID facilities on June 1, 1988, shall be added to each facility's rate.

D. For state FY-91 and dates of service beginning July 1, 1990, the negotiated trend factor shall be equal to one percent (1%) to be applied in the following manner: One percent (1%) of the average per diem rate paid to both state- and nonstate-operated ICF//MR/IID facilities on June 1, 1990, shall be added to each facility's rate.

ity's rate.

E. FY-96 negotiated trend factor. All nonstate-operated ICF//MR/IID facilities shall be granted an increase to their per diem rates effective for dates of service beginning January 1, 1996, of six dollars and seven cents (\$6.07) per patient day for the negotiated trend factor. This adjustment is equal to four and six-tenths percent (4.6%) of the weighted average per diem rates paid to nonstate-operated ICF//MR/IID facilities on June 1, 1995, of one hundred and thirty-one dollars and ninety-three cents (\$131.93).

F. State FY-99 trend factor. All nonstate-operated ICF//MR/IID facilities shall be granted an increase to their per diem rates effective for dates of service beginning July 1, 1998, of four dollars and forty-seven cents (\$4.47) per patient day for the trend factor. This adjustment is equal to three percent (3%) of the weighted average per diem rate paid to nonstate-operated ICF//MR/IID facilities on June 30, 1998, of one hundred forty-eight dollars and ninety-nine cents (\$148.99).

G. State FY-2000 trend factor. All nonstate-operated ICF//MR/IID facilities shall be granted an increase to their per diem rates effective for dates of service beginning July 1, 1999, of four dollars and sixty-three cents (\$4.63) per patient day for the trend factor. This adjustment is equal to three percent (3%) of the weighted average per diem rate paid to nonstate-operated ICF//MR/IID facilities on April 30, 1999, of one hundred fifty-four dollars and forty-three cents (\$154.43). This increase shall only be used for increases for the salaries and fringe benefits for direct care staff and their immediate supervisors.

H. State FY-2001 trend factor. All nonstate-operated ICF//MR/IID facilities shall be granted an increase to their per diem rates effective for dates of service beginning July 1, 2000, of four dollars and eighty-one cents (\$4.81) per patient day for the trend factor. This adjustment is equal to three percent (3%) of the weighted average per diem rate paid to nonstate-operated ICF//MR/IID facilities on April 30, 2000, of one hundred sixty dollars and twenty-three cents (\$160.23). This increase shall only be used for increases for salaries and fringe benefits for direct care staff and their immediate supervisors.

I. State FY-2007 trend factor. All nonstate-operated ICF//MR/IID facilities shall be granted an increase of seven percent (7%) to their per diem rates effective for dates of service billed for state fiscal year 2007 and thereafter. This adjustment is equal to seven percent (7%) of the per diem rate paid to nonstate-operated ICF//MR/IID facilities on June 30, 2006.

J. State FY-2008 trend factor. Effective for dates of service beginning July 1, 2007, all nonstate-operated ICF//MR/IID facilities shall be granted an increase to their per diem rates of two percent (2%) for the trend factor. This adjustment is equal to two percent (2%) of the per diem rate paid to nonstate-operated ICF//MR/IID facilities on June 30, 2007.

K. State FY-2009 trend factor. Effective for dates of service beginning July 1, 2008, all nonstate-operated ICF//MR/IID facilities shall be granted an increase to their per diem rates of three percent (3%) for the trend factor. This adjustment is equal to three percent (3%) of the per diem rate paid to nonstate-operated ICF//MR/IID facilities on June 30, 2008.

L. State FY-2009 catch up increase. Effective for dates of service beginning July 1, 2008, all nonstate-operated ICF//MR/IID facilities shall be granted an increase to their per diem rates of thirteen and ninety-five hundredths percent (13.95%). This adjustment is equal to thirteen and ninety-five hundredths percent (13.95%) of the per diem rate paid to nonstate-operated ICF//MR/IID facilities on June 30, 2008. This increase is intended to provide compensation to providers for the years (2003, 2004, 2005, and 2006) where no trend factor was given. The catch up increase was based on the CMS PPS Skilled Nursing Facility Input Price Index (4 quarter moving average).

M. State FY-2012 trend factor. Effective for dates of service beginning October 1, 2011, all nonstate-operated ICF//MR/IID

facilities shall be granted an increase to their per diem rates of one and four tenths percent (1.4%) for the trend factor. This adjustment is equal to one and four tenths percent (1.4%) of the per diem rate paid to nonstate-operated ICF//MR//IID facilities on September 30, 2011.

N. State FY-2014 trend factor. Effective for dates of service beginning January 1, 2014, all nonstate-operated ICF//MR//IID facilities shall be granted an increase to their per diem rates of three percent (3%) for the trend factor. This adjustment is equal to three percent (3%) of the per diem rate paid to nonstate-operated ICF//MR//IID facilities on December 31, 2013.

O. State FY-2016 trend factor. Effective for dates of service beginning February 1, 2016, all nonstate-operated ICF//IID facilities shall be granted an increase to their per diem rates of one percent (1%) for the trend factor. This adjustment is equal to one percent (1%) of the per diem rate paid to nonstate-operated ICF//IID facilities on January 31, 2016.

P. State FY-2017 trend factor. Effective for dates of service beginning September 1, 2016, all nonstate-operated ICF//IID facilities shall be granted an increase to their per diem rates of two percent (2%) for the trend factor. This adjustment is equal to two percent (2%) of the per diem rate paid to nonstate-operated ICF//IID facilities on August 31, 2016.

2. Adjustments to rates. The prospectively determined reimbursement rate may be adjusted only under the following conditions:

A. When information contained in a facility's cost report is found to be fraudulent, misrepresented, or inaccurate, the facility's reimbursement rate may be reduced, both retroactively and prospectively, if the fraudulent, misrepresented, or inaccurate information as originally reported resulted in establishment of a higher reimbursement rate than the facility would have received in the absence of this information. No decision by the MO HealthNet agency to impose a rate adjustment in the case of fraudulent, misrepresented, or inaccurate information in any way shall affect the MO HealthNet agency's ability to impose any sanctions authorized by statute or rule. The fact that fraudulent, misrepresented, or inaccurate information reported did not result in establishment of a higher reimbursement rate than the facility would have received in the absence of the information also does not affect the MO HealthNet agency's ability to impose any sanctions authorized by statute or rules;

B. In accordance with subsection (6)(B) of this rule, a newly constructed facility's initial reimbursement rate may be reduced if the facility's actual allowable per diem cost for its first twelve (12) months of operation is less than its initial rate;

C. When a facility's MO HealthNet reimbursement rate is higher than either its private pay rate or its Medicare rate, the MO HealthNet rate will be reduced in accordance with subsection (2)(B) of this rule;

D. When the provider can show that it incurred higher cost due to circumstances beyond its control, and the circumstances are not experienced by the nursing home or ICF//MR//IID industry in general, the request must have a substantial cost effect. These circumstances include, but are not limited to:

(I) Acts of nature, such as fire, earthquakes, and flood, that are not covered by insurance;

(II) Vandalism, civil disorder, or both; or

(III) Replacement of capital depreciable items not built into existing rates that are the result of circumstances not related to normal wear and tear or upgrading of existing system;

E. When an adjustment to a facility's rate is made in accordance with the provisions of section (6) of this rule; or

F. When an adjustment is based on an Administrative Hearing Commission or court decision.

(B) In the case of newly constructed nonstate-operated ICF//MR//IID facilities entering the MO HealthNet program after October 31, 1986, and for which no rate has previously been set, the director or his/her designee may set an initial rate for the facility as in his/her discretion s/he deems appropriate. The initial rate shall be

subject to review by the advisory committee under the provisions of section (6) of this rule.

(5) Covered Services and Supplies.

(A) ICF//MR//IID services and supplies covered by the per diem reimbursement rate under this plan, and which must be provided, as required by federal or state law or rule and include, among other services, the regular room, dietary and nursing services, or any other services that are required for standards of participation or certification. Also included are minor medical and surgical supplies and the use of equipment and facilities. These items include, but are not limited to, the following:

1. All general nursing services including, but not limited to, administration of oxygen and related medications, hand-feeding, incontinency care, tray service, and enemas;

2. Items which are furnished routinely and relatively uniformly to all participants, for example, gowns, water pitchers, soap, basins, and bed pans;

3. Items such as alcohol, applicators, cotton balls, bandaids, and tongue depressors;

4. All nonlegend antacids, nonlegend laxatives, nonlegend stool softeners, and nonlegend vitamins. Any nonlegend drug in one (1) of these four (4) categories must be provided to residents as needed and no additional charge may be made to any party for any of these drugs. Facilities may not elect which nonlegend drugs in any of the four (4) categories to supply; all must be provided as needed within the existing per diem rate;

5. Items which are utilized by individual participants but which are reusable and expected to be available, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable, nondepreciable medical equipment;

6. Additional items as specified in the appendix to this plan when required by the patient;

7. Special dietary supplements used for tube feeding or oral feeding, such as elemental high nitrogen diet, including dietary supplements written as a prescription item by a physician;

8. All laundry services except personal laundry which is a non-covered service;

9. All general personal care services which are furnished routinely and relatively uniformly to all participants for their personal cleanliness and appearance shall be covered services, for example, necessary clipping and cleaning of fingernails and toenails, basic hair care, shampoos, and shaves to the extent necessary for reasonable personal hygiene. The provider shall not bill the patient or his/her responsible party for this type of personal service;

10. All consultative services as required by state or federal law or regulation or for proper operation by the provider. Contracts for the purchase of these services must accompany the provider cost report. Failure to do so will result in the penalties specified in section (9) of this rule;

11. Semiprivate room and board and private room and board when necessary to isolate a participant due to a medical or social condition, such as contagious infection, irrational loud speech, and the like. Unless a private room is necessary due to a medical or social condition, a private room is a noncovered service, and a MO HealthNet participant or responsible party may therefore pay the difference between a facility's semiprivate charge and its charge for a private room. MO HealthNet participants may not be placed in private rooms and charged any additional amount above the facility's MO HealthNet per diem unless the participant or responsible party in writing specifically requests a private room prior to placement in a private room and acknowledges that an additional amount not payable by MO HealthNet will be charged for a private room;

12. Twelve (12) days per any period of six (6) consecutive months during which a participant is on a temporary leave of absence from the facility. Temporary leave of absence days must be specifically provided for in the participant's plan of care. Periods of time during which a participant is away from the facility because s/he is

visiting a friend or relative are considered temporary leaves of absence; and

13. Days when participants are away from the facility overnight on facility-sponsored group trips under the continuing supervision and care of facility personnel.

(6) Rate Determination. All nonstate-operated ICF//MR/IID providers of LTC services under the MO HealthNet program who desire to have their rates changed or established must apply to the MO HealthNet Division. The department may request the participation of the Department of Mental Health in the analysis for rate determination. The procedure and conditions for rate reconsideration are as follows:

(E) Rate Adjustments. The department may alter a facility's per diem rate based on—

1. Court decisions;
2. Administrative Hearing Commission decisions;
3. Determination through desk audits, field audits, and other means, which establishes misrepresentations in or the inclusion of unallowable costs in the cost report used to establish the per diem rate. In these cases, the adjustment shall be applied retroactively; or
4. Adjustments determined by the department without the advice of the rate advisory committee.

A. Prospective payment adjustment (PPA). A FY-92 PPA will be provided prior to the end of the state fiscal year for nonstate-operated ICF//MR/IID facilities with a current provider agreement on file with the MO HealthNet Division as of October 1, 1991.

(I) For providers which qualify, the PPA shall be the lesser of—

(a) The provider's facility peer group factor (FPGF) times the projected patient days (PPD) covered by the adjustment year times the prospective payment adjustment factor (PPAF) times the nonstate-operated intermediate care facility for *[the mentally retarded] individuals with intellectual disabilities* ceiling (ICF//MR/IIDC) on October 1, 1991 ($FPGF \times PPD \times PPAF \times ICF//MR/IIDC$). For example: A provider having nine hundred twenty (920) paid days for the period May 1991 to July 1991 out of a total paid days for this same period of twenty-eight thousand five hundred sixty-one (28,561) represents an FPGF of three and twenty-two hundredths percent (3.22%). So using the FPGF of 3.22% \times 114,244 \times 24.5% \times \$156.01 = \$140,659; or

(b) The provider FPGF times one hundred forty-five percent (145%) of the amount credited to the intermediate care revenue collection center (ICRCC) of the State Title XIX Fund (STF) for the period October 1, 1991 through December 31, 1991.

(II) FPGF—is determined by using each ICF//MR/IID facility's paid days for the service dates in May 1991 through July 1991 as of September 20, 1991, divided by the sum of the paid days for the same service dates for all provider's qualifying as of the determination date of October 16, 1991.

(III) ICF//MR/IIDC—is one hundred fifty-six dollars and one cent (\$156.01) on October 1, 1991.

(IV) PPAF—is equal to twenty-four and five-tenths percent (24.5%) for fiscal year 1992 which includes an adjustment for economic trends.

(V) PPD—is the projection of one hundred fourteen thousand two hundred forty-four (114,244) patient days made on October 1, 1991, for the adjustment year;

5. FY-92 trend factor and Workers' Compensation. All facilities with either an interim rate or a prospective per diem rate in effect on September 1, 1992, shall be granted an increase to their per diem rate effective September 1, 1992, of eight dollars and eighty-six cents (\$8.86) per patient day related to the continuation of the FY-92 trend factor and the Workers' Compensation adjustment. This adjustment is equal to seven and one-half percent (7.5%) of the March 1992 weighted average per diem rate of one hundred eighteen dollars and fourteen cents (\$118.14) for all nonstate-operated ICF//MR/IID facilities; or

6. FY-93 negotiated trend factor. All facilities with either an interim rate or prospective per diem rate in effect on September 1, 1992, shall be granted an increase to their per diem rate effective September 1, 1992, of one dollar and sixty-six cents (\$1.66) per patient day for the negotiated trend factor. This adjustment is equal to one and four-tenths percent (1.4%) of the March 1992 weighted average per diem rate of one hundred eighteen dollars and fourteen cents (\$118.14) for all nonstate-operated ICF//MR/IID facilities; and

(7) Allowable Cost Areas.

(N) Utilization Review. Incurred cost for the performance of required utilization review for ICF//MR/IID is an allowable cost area. The expenditures must be for the purpose of providing utilization review on behalf of a Title XIX participant. Utilization review costs incurred for Title XVIII and Title XIX must be apportioned on the basis of reimbursable participant days recorded for each program during the reporting period.

(R) Apportionment of Costs to MO HealthNet Participant Residents.

1. Provider's allowable cost areas shall be apportioned between MO HealthNet program participant residents and other patients so that the share borne by the MO HealthNet program is based upon actual services received by program participants.

2. To accomplish this apportionment, the ratio of participant residents' charges to total patient charges for the service of each ancillary department may be applied to the cost of this department. To this shall be added the cost of routine services for MO HealthNet program participant residents determined on the basis of a separate average cost per diem for general routine care areas or at the option of the provider on the basis of overall routine care area.

3. So that its charges may be allowable for use in apportioning costs under the program, each provider shall have an established charge structure which is applied uniformly to each patient as services are furnished to the patient and which is reasonable and consistently related to the cost of providing these services.

4. Average cost per diem for general routine services means the amount computed by dividing the total allowable patient costs for routine services by the total number of patient days of care rendered by the provider in the cost-reporting period.

5. A patient day of care is that period of service rendered a patient between the census-taking hours on two (2) consecutive days, including the twelve (12) temporary leave of absence days per any period of six (6) consecutive months as specifically covered under section (5) of this rule, the day of discharge being counted only when the patient was admitted the same day. A census log shall be maintained in the facility for documentation purposes. Census shall be taken daily at midnight. A day of care includes those overnight periods when a participant is away from the facility on a facility-sponsored group trip and remains under the supervision and care of facility personnel.

6. ICF//MR/IID facilities that provide intermediate care services to MO HealthNet participants may establish distinct part cost centers in their facility provided that adequate accounting and statistical data required to separately determine the nursing care cost of each distinct part is maintained. Each distinct part may share the common services and facilities, such as management services, dietary, housekeeping, building maintenance, and laundry.

7. In no case may a provider's allowable costs allocated to the MO HealthNet program include the cost of furnishing services to persons not covered under the MO HealthNet program.

AUTHORITY: section 208.159, RSMo 2000, and sections 208.153 and 208.201, RSMo Supp. 2013. This rule was previously filed as 13 CSR 40-81.083. Original rule filed Aug. 13, 1982, effective Nov. 11, 1982. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Aug. 15, 2016, effective Sept. 1, 2016, expires Feb. 27, 2017. Amended: Filed Aug. 15, 2016.

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions approximately two hundred five thousand nine hundred ninety-six dollars (\$205,996) for SFY 2017.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication in the **Missouri Register**. If to be hand-delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, MO. No public hearing is scheduled.*

**FISCAL NOTE
PUBLIC COST**

- I. Department Title:** Title 13 - Department of Social Services
Division Title: Division 70 - MO HealthNet Division
Chapter Title: Chapter 10 - Nursing Home Program

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|------------------------------|---|
| Rule Number and Name: | 13 CSR 70-10.030 Prospective Reimbursement Plan for Nonstate-Operated Facilities for ICF/IID Services |
| Type of Rulemaking: | Proposed Amendment |

II. SUMMARY OF FISCAL IMPACT

| Affected Agency or Political Subdivision | Estimated Cost of Compliance in the Aggregate |
|--|---|
| Department of Social Services MO HealthNet Division | Estimated cost for SFY 2017: \$205,996 Estimated Ongoing Annual Cost = \$200,642 |

III. WORKSHEET

| Description | Trend Increase |
|--|----------------|
| <u>SFY 2016 - 1% Trend Factor</u> | |
| Estimated Annual Paid Days: SFY 2016 | 28,180 |
| Rate Effective February 2016 (5 months of SFY 2016) | 5/12 |
| Estimated Patient Days Impacted during SFY 2016 | 11,742 |
| x Average Per Diem Rate Increase | \$2.36 |
| Total Estimated Impact for SFY 2016 trend to be paid in SFY 2017 | \$27,710 |
| <u>SFY 2016 - 1% Trend Factor</u> | |
| Estimated Annual Paid Days: SFY 2017 | 28,180 |
| x Average Per Diem Rate Increase | \$2.36 |
| Total Estimated Impact for SFY 2016 trend to be paid in SFY 2017 | \$66,505 |
| <u>SFY 2017 - 2% Trend Factor</u> | |
| Estimated Annual Paid Days: SFY 2017 | 28,180 |
| Rate Effective September 2016 (10 months of year) | 10/12 |
| Estimated Patient Days Impacted during SFY 2017 | 23,483 |
| x Average Per Diem Rate Increase | \$4.76 |
| Total Estimated Impact for SFY 2017 trend | \$111,781 |
| Total Estimated Impact for SFY 2017 | \$205,996 |
| State Share (36.772%) | \$75,749 |
| Federal Share (63.228%) | \$130,354 |
| <u>Ongoing Annual Cost</u> | |
| Estimated Annual Paid Days | 28,180 |
| x Average Per Diem Rate Increase | \$7.12 |
| Total Estimated Annual Impact | \$200,642 |

IV. ASSUMPTIONS

Estimated Paid Days:

ICF/IID Facility:

The estimated paid days for SFY 2016 and SFY 2017 are based on the actual Medicaid days paid for nonstate-operated ICF/IID facility services paid during SFY 2015. There are seven (7) facilities which operate close to full occupancy and the number of patient days has been constant each year.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION**

**Division 2270—Missouri Veterinary Medical Board
Chapter 1—General Rules**

PROPOSED RULE

**20 CSR 2270-1.051 Renewal of License or Registration for
Military Members**

PURPOSE: This rule sets forth the procedures for licensees and registrants who are members of any United States or State of Missouri military, pursuant to section 41.950, RSMo, who have served on active military duty, pursuant to section 41.950, RSMo. Specifically, the rule sets forth procedures for the renewal of a license or registration, for completing obligations of the board, and for discipline of a license or registration.

(1) Any individual holding a current license or registration that is engaged in the performance of active military duty who has their license or registration lapse while performing such military service, may renew or reinstate such license or registration without penalty by—

(A) Filing with the board a Notice of Active Military Duty on a form provided by the board or by written communication accepted by the board that shall be signed and dated by the individual and shall contain the individual's name, address, the type of license or registration, license or registration number, and the date of active duty activation, and shall be accompanied by a copy of the individual's active duty orders or other evidence sufficient for the board to determine the dates of active military duty; and

(B) Filing such Notice of Active Military Duty or accepted written communication with the board no later than sixty (60) days after completion of the active duty military service.

(2) Upon receipt and approval of the Notice of Active Military Duty or accepted written communication, the board shall reinstate the individual's license or registration with no further requirements.

(3) If a licensee or registrant fails to take any required action or fails to meet any required obligation of the board while the licensee or registrant is on active military duty, the licensee or registrant shall have at least one hundred eighty (180) days after the end of his or her active military duty to take those actions or fulfill those obligations before any administrative action can be taken by the board.

(4) If the board desires to initiate disciplinary action, administrative action, or any other proceeding where the licensee or registrant is a necessary party and the licensee or registrant is on active military duty, the board shall stay such action or proceeding until at least sixty (60) days after the licensee or registrant returns from active duty.

AUTHORITY: sections 41.950, RSMo Supp. 2013, and section 340.210, RSMo 2000. Original rule filed Aug. 8, 2016.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions approximately three dollars (\$3) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation, and are expected to increase at the rate projected by the Legislative Oversight Committee.

PRIVATE COST: This proposed rule will cost private entities approximately seventy-one dollars and thirty-eight cents (\$71.38) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation, and are expected to increase at the rate projected by the Legislative Oversight Committee.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Veterinary Medical Board, PO Box 633, Jefferson City, MO 65102, via facsimile at (573) 526-3856, or via email at vets@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

PUBLIC FISCAL NOTE

I. RULE NUMBER

Title 20 -Department of Insurance, Financial Institutions and Professional Registration
Division 2270 - Missouri Veterinary Medical Board
Chapter 1 - General Rules
Proposed Rule to 20 CSR 2270 - 1.051 Renewal of Licenses for Military Members
Prepared July 3, 2014 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

| Affected Agency or Political Subdivision | Estimated Costs |
|--|---|
| Missouri Veterinary Medical Board | \$2.86 |
| | to \$2.98 |
| | Total Annual Cost of Compliance for the Life of the Rule \$3.00 |

III. WORKSHEET

The Processing Technician II provides technical support, processes applications for licensure, and responds to inquiries related to the licensure law and/or rules and regulations.

Personal Service

| STAFF | ANNUAL SALARY RANGE | SALARY TO INCLUDE FRINGE | HOURLY SALARY | COST PER MINUTE | TIME PER APPLICATION | COST PER APPLICATION | NUMBER OF ITEMS | TOTAL COST |
|---|---------------------|--------------------------|---------------|-----------------|----------------------|----------------------|-----------------|-------------------------|
| Processing Technician II | \$24,579 | \$37,116 | \$17.84 | \$0.30 | 5 minutes | \$1.49 | 1 | \$1.49 |
| | to \$26,640 | to \$40,228 | to \$19.34 | to \$0.32 | | to \$1.61 | | to \$1.61 |
| Total Personal Service Costs During the First Year of Implementation | | | | | | | | \$1.49 to \$1.61 |

Expense and Equipment

| Item | Cost | Quantity | Total Cost Per Item |
|--|--------|----------|---------------------|
| Correspondence Mailing | \$0.65 | 1 | \$0.65 |
| License Printing and Postage | \$0.72 | 1 | \$0.72 |
| Total Expense and Equipment Costs | | | \$1.37 |

IV. ASSUMPTIONS

1. Employees' salaries were calculated using the annual salary multiplied by 51.005% for fringe benefits and then divided by 2080 hours per year to determine the hourly salary. The hourly salary was then divided by 60 minutes to determine the cost per minute. The cost per minute was then multiplied by the amount of time individual staff spent on the processing of applications or renewals. The total cost was based on the cost per application multiplied by the estimated number of applications.

Note: The public fiscal note for this rule only reflects the cost for this particular process. However, private entity fees are set at an amount to cover the total actual cost incurred by the office, which includes personal service, expense and equipment and transfers.

PRIVATE FISCAL NOTE

I. RULE NUMBER

Title 20 -Department of Insurance, Financial Institutions and Professional Registration

Division 2270 - Missouri Veterinary Medical Board

Chapter 1 - General Rules

Proposed Rule to 20 CSR 2270 - 1.051 Renewal of Licenses for Military Members

Prepared July 3, 2014 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

| Estimate the number of entities by class which would likely be affected by the adoption of the proposed amendment: | Classification by type of the business entities which would likely be affected: | Estimated cost of compliance with the amendment by affected entities: |
|--|---|---|
| 1 | Veterinarian Annual Renewal Fee (Annual Renewal Fee @ \$50) | \$50 |
| 1 | Veterinary Technician Annual Renewal Fee (Annual Renewal Fee @ \$20) | \$20 |
| 2 | Notice of Active Military Duty Postage (Postage @ \$0.49) | \$0.98 |
| 2 | Notice of Active Military Duty copy of active duty orders (2 pages of orders / 10 cents per sheet @ \$0.20) | \$0.40 |
| | Estimated Annual Cost of the Amendment for the Life of the Rule | \$71.38 |

III. WORKSHEET

See Table Above

IV. ASSUMPTIONS

1. The board anticipates that there will be very few licensees that will require late renewal. It is estimated that the board will have approximately one applicant annually that will renew due to active military duty.
2. It is anticipated that the total costs will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee. Expected to increase at the rate projected by the Legislative Oversight Committee.

Note: The board is statutorily obligated to enforce and administer the provisions of Chapter 340, RSMo. Pursuant to section 340.210, RSMo, the board shall by rule and regulation set the amount of fees authorized by Chapter 340, RSMo so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of Chapter 340, RSMo.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION**

**Division 2270—Missouri Veterinary Medical Board
Chapter 2—Licensure Requirements for Veterinarians**

PROPOSED RULE

**20 CSR 2270-2.080 Military Training to Meet Requirements for
Licensure**

PURPOSE: This rule requires the board to accept evidence of military education, training, or service to be applied toward the requirements for licensure.

(1) Any applicant for licensure may, as part of the evidence of meeting the requisite educational and/or training requirements for licensure, submit evidence of military experience as a member of the military.

(2) The board shall review the evidence submitted and, if appropriate, make additional inquiry of the applicant to determine the scope and duties of the military experience to determine whether the military experience shall be counted towards the qualifications for licensure.

(3) In its review of the military experience, the board shall evaluate the content and nature of the military experience to determine whether that military experience shall count towards the education, training, or service requirements for licensure. The board shall construe liberally the military experience in determining whether it will count towards the education, training, or service requirements for licensure.

(4) "Military experience" shall mean education, training, or service completed by an applicant while a member of the United States armed forces or reserves, the national guard of any state, the military reserves of any state, or the naval militia of any state.

AUTHORITY: section 324.007, RSMo Supp. 2013, and section 340.210, RSMo 2000. Original rule filed Aug. 8, 2016.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions approximately three dollars (\$3) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation, and are expected to increase at the rate projected by the Legislative Oversight Committee.

PRIVATE COST: This proposed rule will cost private entities approximately one dollar and five cents (\$1.05) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation, and are expected to increase at the rate projected by the Legislative Oversight Committee.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Veterinary Medical Board, PO Box 633, Jefferson City, MO 65102, via facsimile at (573) 526-3856, or via email at vets@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

PUBLIC FISCAL NOTE

I. RULE NUMBER

Title 20 -Department of Insurance, Financial Institutions and Professional Registration
Division 2270 - Missouri Veterinary Medical Board
Chapter 2 - Licensure Requirements for Veterinarians
Proposed Rule to 20 CSR 2270 - 2.080 Military Training to Meet Requirements for Licensure
 Prepared July 9, 2014 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

| Affected Agency or Political Subdivision | Estimated Costs |
|--|---|
| Missouri Veterinary Medical Board | \$2.86 |
| | to |
| | \$2.98 |
| | Total Annual Cost of Compliance for the Life of the Rule |
| | \$3.00 |

III. WORKSHEET

The Processing Technician II provides technical support, processes applications for licensure and responds to inquiries related to the licensure law and/or rules and regulations.

Personal Service

| STAFF | ANNUAL SALARY RANGE | SALARY TO INCLUDE FRINGE BENEFIT | HOURLY SALARY | COST PER MINUTE | TIME PER APPLICATION | COST PER APPLICATION | NUMBER OF ITEMS | TOTAL COST |
|---|---------------------|----------------------------------|---------------|-----------------|----------------------|----------------------|-----------------|-------------------------|
| Processing Technician II | \$24,579 | \$37,116 | \$17.84 | \$0.30 | 5 minutes | \$1.49 | 1 | \$1.49 |
| | to \$26,640 | to \$40,228 | to \$19.34 | to \$0.32 | | to \$1.61 | | to \$1.61 |
| Total Personal Service Costs During the First Year of Implementation | | | | | | | | \$1.49 to \$1.61 |

Expense and Equipment

| Item | Cost | Quantity | Total Cost Per Item |
|--|--------|----------|---------------------|
| Correspondence Mailing | \$0.65 | 1 | \$0.65 |
| License Printing and Postage | \$0.72 | 1 | \$0.72 |
| Total Expense and Equipment Costs | | | \$1.37 |

IV. ASSUMPTIONS

1. Employees' salaries were calculated using the annual salary multiplied by 51.005% for fringe benefits and then divided by 2080 hours per year to determine the hourly salary. The hourly salary was then divided by 60 minutes to determine the cost per minute. The cost per minute was then multiplied by the amount of time individual staff spent on the processing of applications or renewals. The total cost was based on the cost per application multiplied by the estimated number of applications.

Note: The public fiscal note for this rule only reflects the cost for this particular process. However, private entity fees are set at an amount to cover the total actual cost incurred by the office, which includes personal service, expense and equipment and transfers.

PRIVATE FISCAL NOTE

I. RULE NUMBER

Title 20 -Department of Insurance, Financial Institutions and Professional Registration
Division 2270 - Missouri Veterinary Medical Board
Chapter 2 - Licensure Requirements for Veterinarians
Proposed Rule to 20 CSR 2270 - 2.080 Military Training to Meet Requirements for Licensure
 Prepared July 9, 2014 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

| Estimate the number of entities by class which would likely be affected by the adoption of the proposed amendment: | Classification by type of the business entities which would likely be affected: | Estimated cost of compliance with the amendment by affected entities: |
|--|---|---|
| 1 | Applicant - Evidence of Military education, training, or service to be applied toward the requirements for licensure. Postage @ \$0.65 | \$0.65 |
| 1 | Notice of Active Military Duty copy of education, training, or service (4 pages of evidence @ \$0.10 per sheet) | \$0.40 |
| Estimated Annual Cost of the Amendment for the Life of the Rule | | \$1.05 |

III. WORKSHEET

See Table Above

IV. ASSUMPTIONS

1. The board anticipates that there will be very few applicants using military education, training, or service to be applied toward the requirements for licensure. It is estimated that the board will have approximately one applicant.
2. It is anticipated that the total costs will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee. Expected to increase at the rate projected by the Legislative Oversight Committee.

Note: The board is statutorily obligated to enforce and administer the provisions of Chapter 340, RSMo. Pursuant to section 340.210, RSMo, the board shall by rule and regulation set the amount of fees authorized by Chapter 340, RSMo so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of Chapter 340, RSMo.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2270—Missouri Veterinary Medical Board
Chapter 3—Registration Requirements for Veterinary
Technicians**

PROPOSED RULE

**20 CSR 2270-3.045 Military Training to Meet Requirements for
Registration**

PURPOSE: This rule requires the board to accept evidence of military education, training, or service to be applied toward the requirements for registration.

(1) Any applicant for registration may, as part of the evidence of meeting the requisite educational and/or training requirements for registration, submit evidence of military experience as a member of the military.

(2) The board shall review the evidence submitted and, if appropriate, make additional inquiry of the applicant to determine the scope and duties of the military experience to determine whether the military experience shall be counted towards the qualifications for registration.

(3) In its review of the military experience, the board shall evaluate the content and nature of the military experience to determine whether that military experience shall count towards the education, training, or service requirements for registration. The board shall construe liberally the military experience in determining whether it will count towards the education, training, or service requirements for registration.

(4) "Military experience" shall mean education, training, or service completed by an applicant while a member of the United States armed forces or reserves, the national guard of any state, the military reserves of any state, or the naval militia of any state.

AUTHORITY: section 324.007, RSMo Supp. 2013, and section 340.210, RSMo 2000. Original rule filed Aug. 8, 2016.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions approximately three dollars (\$3) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation, and are expected to increase at the rate projected by the Legislative Oversight Committee.

PRIVATE COST: This proposed rule will cost private entities approximately one dollar and five cents (\$1.05) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation, and are expected to increase at the rate projected by the Legislative Oversight Committee.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Veterinary Medical Board, PO Box 633, Jefferson City, MO 65102, via facsimile at (573) 526-3856, or via email at vets@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.*

PUBLIC FISCAL NOTE

I. RULE NUMBER

Title 20 -Department of Insurance, Financial Institutions and Professional Registration
Division 2270 - Missouri Veterinary Medical Board
Chapter 3 - Registration Requirements for Veterinary Technicians
Proposed Rule to 20 CSR 2270 - 3.045 Military Training to Meet Requirements for Registration
 Prepared July 9, 2014 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

| Affected Agency or Political Subdivision | Estimated Costs |
|--|---|
| Missouri Veterinary Medical Board | \$2.86 |
| | to \$2.98 |
| | Total Annual Cost of Compliance for the Life of the Rule \$3.00 |

III. WORKSHEET

The Processing Technician II provides technical support, processes applications for registration and responds to inquiries related to the licensure law and/or rules and regulations.

Personal Service

| STAFF | ANNUAL SALARY RANGE | SALARY TO INCLUDE FRINGE BENEFIT | HOURLY SALARY | COST PER MINUTE | TIME PER APPLICATION | COST PER APPLICATION | NUMBER OF ITEMS | TOTAL COST |
|---|---------------------|----------------------------------|---------------|-----------------|----------------------|----------------------|-----------------|--------------------------------------|
| Processing Technician II | \$24,579 | \$37,116 | \$17.84 | \$0.30 | 5 minutes | \$1.49 | 1 | \$1.49 |
| | to \$26,640 | to \$40,228 | to \$19.34 | to \$0.32 | | to \$1.61 | | to \$1.61 |
| Total Personal Service Costs During the First Year of Implementation | | | | | | | | \$1.49 to \$1.61 |

Expense and Equipment

| Item | Cost | Quantity | Total Cost Per Item |
|--|--------|----------|---------------------|
| Correspondence Mailing | \$0.65 | 1 | \$0.65 |
| Liccnse Printing and Postage | \$0.72 | 1 | \$0.72 |
| Total Expense and Equipment Costs | | | \$1.37 |

IV. ASSUMPTIONS

1. Employees' salaries were calculated using the annual salary multiplied by 51.005% for fringe benefits and then divided by 2080 hours per year to determine the hourly salary. The hourly salary was then divided by 60 minutes to determine the cost per minute. The cost per minute was then multiplied by the amount of time individual staff spent on the processing of applications or renewals. The total cost was based on the cost per application multiplied by the estimated number of applications.

Note: The public fiscal note for this rule only reflects the cost for this particular process. However, private entity fees are set at an amount to cover the total actual cost incurred by the office, which includes personal service, expense and equipment and transfers.

PRIVATE FISCAL NOTE

I. RULE NUMBER

Title 20 - Department of Insurance, Financial Institutions and Professional Registration
Division 2270 - Missouri Veterinary Medical Board
Chapter 3 - Registration Requirements for Veterinary Technicians
Proposed Rule to 20 CSR 2270 - 3.045 Military Training to Meet Requirements for Registration
 Prepared July 9, 2014 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

| Estimate the number of entities by class which would likely be affected by the adoption of the proposed amendment: | Classification by type of the business entities which would likely be affected: | Estimated cost of compliance with the amendment by affected entities: |
|--|--|---|
| 1 | Applicant - Evidence of Military education, training, or service to be applied toward the requirements for registration. Postage @ \$0.65 | \$0.65 |
| 1 | Notice of Active Military Duty copy of education, training, or service (4 pages of evidence @ \$0.10 per sheet) | \$0.40 |
| Estimated Annual Cost of the Amendment for the Life of the Rule | | \$1.05 |

III. WORKSHEET

See Table Above

IV. ASSUMPTIONS

1. The board anticipates that there will be very few applicants using military education, training, or service to be applied toward the requirements for registration. It is estimated that the board will have approximately one applicant.
2. It is anticipated that the total costs will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee. Expected to increase at the rate projected by the Legislative Oversight Committee.

Note: The board is statutorily obligated to enforce and administer the provisions of Chapter 340, RSMo. Pursuant to section 340.210, RSMo, the board shall by rule and regulation set the amount of fees authorized by Chapter 340, RSMo so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of Chapter 340, RSMo.